85 - 2No.13

Supreme Court, U.S.
FILED
JAN 23 1986
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

COMMONWEALTH OF PUERTO RICO,
Petitioner,

v.

TERRY E. BRANSTAD, AND THE STATE OF IOWA,
RONALD CALDER, INTERVENOR,
Respondents.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR CERTIORARI

HECTOR RIVERA CRUZ
Secretary of Justice
Commonwealth of Puerto Rico

RAFAEL ORTIZ CARRION
Solicitor General
Commonwealth of Puerto Rico

LINO J. SALDANA
Counsel of Record
SALDANA, REY, MORAN & ALVARADO
P.O. Box 13954
Santurce, Puerto Rico 00908
(809) 721-6345

SUSAN ESTRICH
KATHLEEN M. SULLIVAN
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-4613
Attorneys for Petitioner

June 23, 1986

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

80pp

QUESTION PRESENTED

Should the 1861 decision in *Kentucky* v. *Dennison*, which permits a state governor absolute discretion to shelter a fugitive from a sister state in violation of the Extradition Clause, finally be explicitly overruled?

TABLE OF CONTENTS.

	PAGE
QUESTION PRESENTED	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
A. The Criminal Proceedings in Puerto Rico	4
B. The Request for Extradition	5
C. The "Extradition Hearing" in Iowa	5
D. The Proceedings in the Mandamus Action Below	7
REASONS FOR GRANTING THE WRIT	8
I. *DENNISON* SHOULD BE RECONSIDERED AND OVERRULED BECAUSE IT UNDERMINES THE PURPOSES OF THE EXTRADITION CLAUSE	9

PAGE

II. *DENNISON* SHOULD BE RECONSIDERED AND OVERRULED AS AN OUTDATED, NINETEENTH CENTURY VIEW OF THE LIMITS OF FEDERAL POWER 17

CONCLUSION 23

TABLE OF AUTHORITIES

Cases:

Apodaca v. *Oregon*, 406 U.S. 404 (1972) 16n

Appleyard v. *Massachusetts*, 203 U.S. 222 (1906) .. 8, 11, 14, 15

Baldwin v. *New York*, 399 U.S. 66 (1970) 16n

Beal v. *Missouri Pacific R.R.*, 312 U.S. 45 (1941) . 14

Biddinger v. *Commissioner of Police*, 245 U.S. 128 (1917) 8, 11

Brown v. *Board of Education*, 347 U.S. 483 (1954) . 19

Brown v. *Board of Education II*, 349 U.S. 294 (1955) 19, 20

Calero-Toledo v. *Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974) 10n

Cooper v. *Aaron*, 358 U.S. 1 (1958) 20

Cordova & Simonpietri Ins. Agency, Inc. v. *Chase Manhattan Bank*, 649 F.2d 36 (1st Cir. 1981) .. 10n

Dred Scott v. *Sandford*, 60 U.S. (19 How.) 393 (1857) 20

Duncan v. *Louisiana*, 391 U.S. 145 (1968) 16n

Examining Board v. *Flores de Otero*, 426 U.S. 572 (1976) 10n, 16n

PAGE

Ex Parte Young, 209 U.S. 123 (1908) 19

FERC v. *Mississippi*, 456 U.S. 742 (1982) . 13, 21, 22

Fry v. *United States*, 421 U.S. 542 (1975) 21

Garcia v. *San Antonio Metropolitan Transit Authority*, 105 S.Ct. 1005 (1985) 21, 22

Griffin v. *Prince Edward County School Board*, 377 U.S. 218 (1964) 20

Hadley v. *Junior College District*, 397 U.S. 50 (1970) . 20

Kentucky v. *Dennison*, 65 U.S. (24 How.) 66 (1861) . *passim*

Kopel v. *Bingham*, 211 U.S. 468 (1909) 10n

Lacelles v. *Georgia*, 148 U.S. 537 (1893) 11

Michigan v. *Doran*, 439 U.S. 282 (1978) . 8, 10, 12n, 13 14, 17, 18

NLRB v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937) 21

New York v. *Miln*, 36 U.S. (11 Pet.) 102 (1837) ... 20

O'Shea v. *Littleton*, 414 U.S. 488 (1974) 14

Pacileo v. *Walker*, 449 U.S. 86 (1980) . 12, 13, 17, 18

Reynolds v. *Sims*, 377 U.S. 533 (1964) 20

Rivera-Rodriguez v. *Popular Democratic Party*, 457 U.S. 1 (1982) 10n, 16n

South Dakota v. *Brown*, 576 P.2d 473 (1978) 13n, 15n, 16n

Steward Machine Co. v. *Davis*, 301 U.S. 548 (1937) 20, 21

Stone v. *Powell*, 428 U.S. 465 (1976) 17

Swann v. *Charlotte Mecklenburg Board of Education*, 402 U.S. 1 (1971) 20

Sweeney v. *Woodall*, 344 U.S. 86 (1952) .. 13, 17, 18

Terrol-Torres v. *Commonwealth of Puerto Rico*, 442 U.S. 465 (1979) 10n, 16n

PAGE

Testa v. *Katt*, 330 U.S. 386 (1947) 13, 21

United States v. *Darby*, 312 U.S. 100 (1941) 20

United States v. *Nixon*, 418 U.S. 683 (1974) 20

Washington v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979) .. 21

Watson v. *Buck*, 313 U.S. 387 (1941) 14

Wickard v. *Filburn*, 317 U.S. 111 (1942) 20

Younger v. *Harris*, 401 U.S. 37 (1971) 14

Constitutional Provisions:

United States Constitution

Article IV, Section 2, Cl. 2 (Extradition Clause) *passim*

Fourth Amendment 10n, 16n

Constitution of the Commonwealth of Puerto Rico, Art. II, Sections 1-20, L.P.R.A. vol. 1 (1982) . 16n

Statutes & Rules:

18 U.S.C. Section 3182 ..... *passim*

28 U.S.C. Section 1254(1) 2

28 U.S.C. Section 1331 ..... 7n

28 U.S.C. Section 1343(3) 16n

42 U.S.C. Section 1983 ..... 16n

48 U.S.C. Section 731(c) 16n

PAGE

Uniform Criminal Extradition Act
Section 2 11
Section 3 12
Section 20 12

Uniform Criminal Extradition Act, Calif. Penal Code Sections 1549.2, 1548.1 ..... 13n

Uniform Criminal Extradition Act, 57A Iowa Code Annot. Sections 820.1-820.29 (1979) 5

Puerto Rico Penal Code of 1975, 33 L.P.R.A. 3021 to 4628 (1983) 16n

34 Laws of Puerto Rico Annot. Sections 1881-1881bb (1971) 5

Puerto Rico Rules of Criminal Procedure, 34 L.P.R.A. App. II, R. 1 to 254 (1971) 16n

Miscellaneous:

Clark and Rogers, *The New Judiciary Act of Puerto Rico: A Definitive Court Reorganization,* 61 Yale L.J. 1147 (1952) 16n

Negron Garcia, *Puerto Rico Updates its Courts,* 58 J. Am. Jud. Soc. 350 (1975) 16n

Note, *Interstate Rendition: Executive Practices and the Effects of Discretion,* 66 Yale L.J. 97 (1956) ... 15n

C. Swisher, *History of the Supreme Court of the United States, Vol. V: The Taney Period (1863-64)* 688 (1974) 18

Trias Monge, El Sistema Judicial de Puerto Rico 112-234 (1978) 16n

PAGE

New York Times, Sept. 3, 1937, p. 6, col. 6 ..... 15n

New York Times, Sept. 2, 1937, p. 8, cols. 4-5 . 15n

New York Times, Dec. 28, 1932, p. 36, col. 4 ... 15n

New York Times, Dec. 23, 1932, p. 7, cols. 1-2 . 15n

No. 85-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

COMMONWEALTH OF PUERTO RICO,

Petitioner,

v.

TERRY E. BRANSTAD, AND THE STATE OF IOWA,
RONALD CALDER, INTERVENOR,

Respondents.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR CERTIORARI

OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, appears in Appendix A. The opinion of the District Court for the Southern District of Iowa, Central Division, not yet reported, appears in Appendix B.

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered on March 28, 1986. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 2, Cl. 2 of the Constitution of the United States, the Extradition Clause, provides that:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction over the Crime.

The Extradition Clause is implemented by the Extradition Act, 18 U.S.C. Section 3182, which provides that:

> Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, district or Territory to which the person has

fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

STATEMENT OF THE CASE

The issue in this case is whether a state governor is free, in plain violation of the Extradition Clause of the federal Constitution, to make his state a safe asylum for an accused murderer who has fled from justice in the courts of a sister state. Two successive governors of Iowa have now refused the Commonwealth of Puerto Rico's request for the extradition of defendant Ronald Calder — notwithstanding that, as Iowa concedes, the Commonwealth's request fully complied with all constitutional and statutory requirements. In the face of this refusal to extradite, the Commonwealth sought a writ of mandamus in federal district court. The district court, however, deemed itself powerless to order the governor of Iowa to fulfill his plain constitutional duty, and the court of appeals below agreed. The sole reason given by each of the courts below for its inability to remedy a plain constitutional wrong was a lone and now ancient decision of this court: *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66 (1861), which held that the duty of a governor to extradite a fugitive to a sister state upon proper request was mandatory, but unenforceable by a federal court. Petitioner contends that few cases could demonstrate as plainly as this one does why that decision must be reconsidered and overruled by this Court.

A. The Criminal Proceedings in Puerto Rico

In the mandamus action in the district court below, the parties stipulated to the following facts about the underlying criminal proceedings in the Commonwealth of Puerto Rico. *See* Appendix ("App.") A17-A21 (Stipulation of Facts). On January 25, 1981, Ronald Calder, the fugitive whose extradition the Commonwealth seeks in this case, ran down with his automobile Amy Villalba De Jesus, a woman eight months pregnant at the time. Stip. 1. Both she and her unborn child died hours later. Stip. 2. In the same incident, Calder's car struck Mrs. Villalba De Jesus' husband, Antonio De Jesus Gonzalez. Stip. 1. Calder was arrested, charged with homicide, and released later the same day. Stip. 3.

After a full probable cause hearing in Superior Court on February 4, 1981, at which sworn testimony was taken from fourteen witnesses and Calder was represented by counsel, Judge Benito Diaz Laureano found probable cause to charge Calder with the first-degree murder of Mrs. Villalba De Jesus and the attempted murder of Mr. De Jesus. Stip. 8; *see also* App. A28-A33 (informations filed by district attorney). The finding was based on testimony by witnesses at the hearing that Calder had deliberately driven his car into the De Jesuses after an argument with Mr. De Jesus in the parking lot of a grocery store, Stip. 6, and indeed that Calder had run his car back and forth over Mrs. Villalba De Jesus' body several times after first hitting her, Stip. 7.

Calder was freed after posting $5000 bail, but failed to appear at either of two subsequent preliminary hearings scheduled in his case. Stip. 9-13. On April 13, 1981, after a fruitless police search for Calder in and around his home, Judge Jose L. Capella Capella of the Superior Court issued an order declaring Calder a fugitive from justice, ordering warrants issued for his arrest, and raising bail to $300,000. Stip. 14; *see also* App. A25-A27.

B. The Request for Extradition

Calder was quickly traced by the Puerto Rico police to Iowa, and the relevant Iowa authorities notified. Calder surrendered to Iowa authorities and posted the $20,000 bond set by an Iowa magistrate. Stip. 15-17. A formal request for Calder's extradition was submitted by Governor Carlos Romero Barcelo of the Commonwealth of Puerto Rico to Governor Robert Ray of Iowa on May 15, 1981. Stip. 18. Accompanying the request were copies of the following documents: a warrant for Calder's arrest, the order declaring Calder a fugitive, the informations charging Calder with first degree murder and with attempted murder, two sworn statements establishing probable cause, and a sworn identification of a photograph of Calder. Stip. 19. The Governor authenticated their request, affirming that Calder had been charged with crimes under Puerto Rico law, that probable cause had been found by a duly constituted court of the Commonwealth, and that Calder was a fugitive from justice. App. A22-A23.

C. The "Extradition Hearing" in Iowa

There is no dispute that Governor Romero Barcelo's extradition request completely satisfied the requirements of the Extradition Clause of the United States Constitution, Article IV, Section 2, Cl. 2, the Congressional Act implementing the clause, 18 U.S.C. Section 3182, or the Uniform Criminal Extradition Act, 57A Iowa Code Annot. Sections 820.1-820.29 (1979); *cf.* 34 Laws of Puerto Rico Annot. Sections 1881-1881bb (1971). Counsel for the Governor of Iowa conceded as much in June 1981 when the extradition request was being reviewed, and the parties so stipulated in the district court below. Stip. 23.

Governor Ray nonetheless rejected Governor Romero Barcelo's fully sufficient request for reasons wholly independent of any failure to meet those constitutional and statutory requirements. At the request of Calder's counsel, Governor Ray ordered that a hearing be conducted by the governor's legal counsel on June 17, 1981. At that hearing, testimony was admitted — over the consistent objection of Puerto Rico's special prosecutor and its district attorney, Stip. 22 — ranging far beyond the constitutional and statutory requirements. Calder's four witnesses — himself, his two lawyers in the Puerto Rico proceedings, and his companion at the scene of the crime charged — were each permitted to testify. Stip. 21. Each expressed personal doubts about the quality of justice administered in Puerto Rico and the integrity of the Commonwealth's courts. One of Calder's lawyers, for example, was permitted to testify that, although he did not speak Spanish, he had had conversations with "anybody that [he] would run across" during a brief visit to Puerto Rico, leading him to believe that Calder, as "a white American man," "could not receive a fair trial in the Commonwealth of Puerto Rico." Appendix filed in the Eighth Circuit, at 78-79.[1] And Calder's companion at the scene of the killing was permitted to report hearsay to the effect that the Commonwealth of Puerto Rico would not let " 'gringos . . . leave the island alive.' " *Id.* at 86.

Following the extradition hearing, Governor Ray attempted to intervene on Calder's behalf by requesting a plea bargain from Governor Romero Barcelo, in order to "get the criminal charge to something more justifiable," in Governor Ray's opinion. Stip. 27; App. A44-A45. Puerto Rico officials discussed the possibility of a future plea agreement with Calder's repre-

[1] The extradition hearing was tape recorded, but only a partial transcript survives, because the State of Iowa destroyed the second of the two tapes. Stip. 25. A copy of the transcript of the first tape may be found in the record below (pages 65-99 of the Appendix filed in the Eighth Circuit).

sentatives, but maintained that under Puerto Rico law, no formal agreement could be concluded while Calder was a fugitive, and that any reduction of charges could be made only upon Calder's return to the Commonwealth. Stip. 26. On December 28, 1981, despite the conceded propriety of the extradition request and with no apparent basis other than the hearsay charges levelled by Calder's witnesses at the extradition hearing against the integrity of Puerto Rico's criminal justice system, Governor Ray formally denied the extradition request. Stip. 27.[2]

D. The Proceedings In the Mandamus Action Below

The Commonwealth of Puerto Rico filed a complaint seeking a writ of mandamus directing the Iowa Governor to grant the extradition demand in the United States District Court for the Southern District of Iowa on February 15, 1984.[3] The district court denied the writ and dismissed the complaint, considering itself bound by this Court's decision in *Kentucky* v. *Dennison* that, even though a Governor's duty to extradite is mandatory under the Constitution, that duty cannot be enforced by a writ of mandamus from the federal courts. App. A12-A14. Acknowledging that the reasoning underlying the holding of Dennison was clearly out-of-date, the district court could not "say with certainty that the Supreme Court would overrule *Kentucky* v. *Dennison* if confronted with the mandamus issue today." App. A14.

---

[2] A renewed request for extradition to newly elected Iowa Governor Branstad was also denied. Stip. 28.

[3] The jurisdiction of the district court was invoked under 28 U.S.C. Section 1331. A motion for leave to file complaint had previously been filed with this Court based on its original jurisdiction. This motion was denied on January 9, 1984.

The United States Court of Appeals for the Eighth Circuit "reluctantly" affirmed, in an opinion and order issued March 28, 1986. App. A2. The court concluded that since Puerto Rico's extradition request "met all constitutional requirements," the Iowa Governor was "act[ing] in clear contravention of the Constitution in refusing extradition because he questions the severity of the crime" and was "sitting in judgment of Puerto Rico's actions . . . [and] accusing Puerto Rico of having a sub-standard [system] of criminal justice." App. A7 & n.7. Nonetheless, the Eighth Circuit felt "constrained" by its "[un]-certainty that the Supreme Court would overrule *Dennison* if the same issue were presented to the Court today." App. A2, A4. In denying relief, the court unanimously concluded: "we cannot emphasize too strongly our deep conviction that the underpinnings of *Dennison* during the past 125 years have been so seriously undermined — especially in view of the mandatory provision of the Extradition Clause of the Constitution — as to suggest reconsideration by the only Court empowered to do so." App. A9.

REASONS FOR GRANTING THE WRIT

As this Court has repeatedly recognized, the Extradition Clause was intended "to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed." *Michigan* v. *Doran*, 439 U.S. 282, 287 (1978), citing *Biddinger* v. *Commissioner of Police*, 245 U.S. 128, 132-33 (1917); *Appleyard* v. *Massachusetts*, 203 U.S. 222, 227 (1906). The purpose of the Clause was "to preclude any state from becoming a sanctuary for fugitives from justice of another state and thus 'balkanize' the administration of criminal justice among several states." *Michigan* v. *Doran*, 439 U.S. at 287.

The facts of this case reflect the complete frustration of these purposes. Five years after the killing of Mrs. Villalba De Jesus, Calder remains a fugitive from justice. Iowa has become Calder's "sanctuary" and Puerto Rico, having complied in every detail with the requirements for extradition, has been unable to enforce its criminal law. The quality and integrity of the judicial system of Puerto Rico have been attacked, and judged "sub-standard," by the executive branch of a sister state. The constitutional norms of comity and respect for each state's integrity on which the Extradition Clause is premised have been flagrantly and blatantly violated.

Nonetheless, both the district court and the court of appeals considered themselves bound by this Court's decision over 100 years ago in *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66 (1861), that a federal court lacks power to remedy a state governor's clear violation of the Extradition Clause of the Constitution. That holding of *Kentucky* v. *Dennison* plainly frustrates the purposes of the Extradition Clause. It arose in a social context that no longer exists — a nation divided over the institution of slavery — and was based on legal theories of federalism that have long since been abandoned by this Court. *Dennison* should be reconsidered and overruled.

I. *DENNISON* SHOULD BE RECONSIDERED AND OVERRULED BECAUSE IT UNDERMINES THE PURPOSES OF THE EXTRADITION CLAUSE.

When the nation's founders established a federal system of government, they were faced with a choice between allowing each state to try fugitives accused of crimes in other states, and requiring fugitives to be returned to stand trial in the state where the crime had been committed. The Framers of the Con-

stitution left no doubt about their choice of the latter alternative; the Extradition Clause provides that:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction over the Crime.

Article IV, Section 2, cl. 2.[4]

The constitutional duty of the asylum state to extradite fugitives upon the demand of another state is thus "articulated in mandatory language." *Michigan* v. *Doran*, 439 U.S. at 287. As this Court has repeatedly recognized, interstate extradition "was intended to be a summary and mandatory executive proceeding." *Id.* at 288. The Framers plainly rejected any regime of extradition at the discretion of the asylum state, for such discretion would defeat the fundamental purposes of the Clause:

---

[4] It has never been suggested by any of the parties to this case, or any of the courts below, that Puerto Rico should be treated differently than a state for purposes of the Extradition Clause; and the decisions of this Court are plainly inconsistent with any such argument. *See, e.g., Kopel* v. *Bingham*, 211 U.S. 468, 474 (1909) (upholding New York governor's obligation to comply with extradition request by Puerto Rico) ("it was long ago held that the power to extradite fugitive criminals as between State and Territory is as complete as between one State and another"); *Rivera-Rodriguez* v. *Popular Democratic Party*, 457 U.S. 1, 7-8 (1982) (due process and equal protection as well as other fundamental guarantees of the United States Constitution apply to Puerto Rico); *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663 (1973) (Puerto Rico subject to the due process clause of the Constitution); *Examining Board* v. *Flores de Otero*, 426 U.S. 572, 580-97 (1976) (Puerto Rico subject to the equal protection guarantee of the Constitution); *Terrol-Torres* v. *Commonwealth of Puerto Rico*, 442 U.S. 465, 469-71 (1979) (fourth amendment fully applicable to Puerto Rico). *See also Cordova & Simonpietri Ins. Agency, Inc.* v. *Chase Manhattan Bank*, 649 F.2d 36 (1st Cir. 1981).

"securing a prompt and efficient administration of the criminal laws of the several States — an object of the first concern to the people of the entire country, and which each State is bound, in fidelity to the Constitution, to recognize." *Appleyard* v. *Massachusetts*, 203 U.S. at 227-28; and "preventing [fugitives from] finding in one State an asylum against the processes of justice of another," *Biddinger* v. *Commissioner*, 245 U.S. at 132; *see Lacelles* v. *Georgia*, 148 U.S. 537 (1893). In short, the Framers of the Constitution made extradition mandatory in order that no state become "a shield for the guilty." *Biddinger* v. *Commissioner*, 245 U.S. at 132-33.

The statutes enacted by Congress and the states to implement the constitutional duty to extradite likewise speak in mandatory terms. In language virtually unchanged from its original enactment in 1793, Congress has provided that, "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, . . . the executive authority of [the asylum state] *shall* cause him to be arrested and secured, and notify the executive authority making such demand," and "*shall* cause the fugitive to be delivered" to the requesting state. 18 U.S.C. Section 3182 (emphasis added). Likewise, the Uniform Criminal Extradition Act, which has been enacted by forty-eight states, including Iowa, as well as by Puerto Rico and the Virgin Islands, provides that, upon demand, "it is the *duty* of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state." Uniform Criminal Extradition Act, Section 2, in 11 Uniform Laws Annot. (West 1974) at 61 (emphasis added).

Moreover, the federal and state extradition acts confer no discretion whatever on the governor of the asylum state to

second-guess the request of the demanding state, so long as the request is accompanied by appropriate documentation: "a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled." 18 U.S.C. Section 3182; *see also* Uniform Criminal Extradition Act, Section 3 (same requirement). On the contrary, the Uniform Criminal Extradition Act expressly forbids inquiry by the asylum state governor into the guilt or innocence of a fugitive whose extradition has been demanded in proper form. Uniform Criminal Extradition Act, Section 20, in 11 Uniform Laws Annot. (West 1974) at 270.[5]

The absolute and mandatory nature of this constitutional process for interstate extradition was fully recognized by this Court in *Kentucky* v. *Dennison*. As Chief Justice Taney wrote for the Court, after an exhaustive review of the history and purposes of the Extradition Clause and its implementing statutes, the duty of an asylum state governor presented with a proper extradition request is "merely ministerial." 65 U.S. at 107. That governor "has no right to look behind . . . or to question" the criminal charges of the demanding state, "or to look into the character of the crime specified." *Id.* Any such second-guessing, wrote Taney, "would render the clause useless for any practical purpose." *Id.* at 102.

This much of *Kentucky* v. *Dennison*, of course, is now well-established law. *See Pacileo* v. *Walker*, 449 U.S. 86, 87-

---

[5] Likewise, even if a fugitive, upon arrest in the asylum state, contests the validity of his arrest and seeks a writ of habeas corpus in the asylum state's courts, this Court has forbidden the habeas court from undertaking any inquiry into issues of the accused's guilt or innocence. *Michigan* v. *Doran*, 439 U.S. at 289 (limiting habeas court's inquiry to the facial propriety of the extradition papers and the identity and status of the suspect).

88 (1980) (per curiam); *Michigan* v. *Doran*, 439 U.S. at 288; *Sweeney* v. *Woodall*, 344 U.S. 86, 90 (1952). Petitioner contests only the ultimate holding of *Dennison* — that if a governor does choose to second-guess the demanding state's criminal process in violation of his mandatory duty, as did Governor Ray of Iowa here, the federal government is powerless to do anything about it. *See Kentucky* v. *Dennison*, 65 U.S. at 109-10. Under that holding, the federal courts lack authority to review a governor's refusal to extradite. Under that holding, even *Congress* is barred from mandating extradition, and the compulsory language of the federal Extradition Act is virtually nullified.

By completely insulating state governors' extradition decisions from federal oversight, *Kentucky* v. *Dennison* converts the mandatory duty imposed by the Constitution into a wholly discretionary decision of the asylum state's executive.[6] It thus wholly undermines the purposes of the Extradition Clause, improperly rendering state governors' discretion supreme over the federal Constitution and federal law. *See Testa* v. *Katt*, 330 U.S. 386, 393 (1947); *FERC* v. *Mississippi*, 456 U.S. 742, 763 n.28 (1982) ("*Testa* . . . placed the obligation of state officials to enforce federal law squarely in the Supremacy Clause.").

First, the asylum state governor is left free by *Kentucky* v. *Dennison* to frustrate the Constitution's concern "to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed," *Michigan* v. *Doran*, 439 U.S.

---

[6] Nor is relief from a governor's refusal to extradite available in state forums. In *South Dakota* v. *Brown*, 576 P.2d 473 (1978), for example, the California Supreme Court, relying on *Dennison*, held itself powerless to order Governor Jerry Brown to comply with South Dakota's request for the extradition of Dennis Banks, the Native American activist who had been convicted in South Dakota of riot while armed with a dangerous weapon and assault with a dangerous weapon with intent to kill — notwithstanding the mandatory language of the Uniform Extradition Act, *see* Calif. Penal Code Sections 1549.2, 1548.1.

at 287. At best, *Dennison*'s holding of impunity for a recalcitrant governor allows him to delay extradition while he considers whatever issues he chooses, meanwhile forcing the requesting state to defend the integrity of its processes in the executive branch of another state. At worst, *Dennison* permits a recalcitrant governor unilaterally to block the requesting state from enforcing its criminal laws at all.

There can be no doubt whatever that the integrity of each state's ability to enforce its criminal laws is "an object of the first concern." *Appleyard* v. *Massachusetts*, 203 U.S. at 227-28. For just that reason, this Court has repeatedly rejected the claims of criminal defendants to anticipatory relief against valid, ongoing state criminal prosecutions. *Younger* v. *Harris*, 401 U.S. 37 (1971). *See also O'Shea* v. *Littleton*, 414 U.S. 488, 499-501 (1974). This Court has insisted that "[n]o citizen is immune from prosecution, in good faith, for his alleged criminal acts." *Younger* v. *Harris*, 401 U.S. at 46, quoting *Watson* v. *Buck*, 313 U.S. 387, 400 (1941); *Beal* v. *Missouri Pacific R.R.*, 312 U.S. 45, 49 (1941). Yet just such immunity, which this Court has denied to a state criminal defendant who seeks refuge in a federal court, is effectively granted by *Kentucky* v. *Dennison* to that same defendant so long as he seeks asylum instead with a sympathetic governor in another state.

Second, *Kentucky* v. *Dennison* leaves an asylum state governor free to frustrate the Constitution's "concern for . . . comity in extradition," *Michigan* v. *Doran*, 439 U.S. at 296 (Blackmun, J., concurring in result), by leaving him free with impunity to sit in judgment of the demanding state's courts. Indeed, the "extradition hearing" conducted by Governor Ray of Iowa here amounted to nothing less than a direct attack on the integrity of the courts of the Commonwealth of Puerto Rico.[7]

[7] By comparison, the Michigan court's "delv[ing] into the niceties of the underpinnings of the demanding State's probable-cause determination" forbidden by this Court in *Michigan* v. *Doran*, *see* 439 U.S. at 297 (Blackmun, J., concurring in result), was mild.

The sole focus of that hearing was the quality of justice afforded by Puerto Rico's judiciary. Hearsay testimony elicited from the fugitive and his lawyers, grounded in plain self-interest and smacking of racism, attacked the ability of Puerto Rico's courts to impanel impartial juries, protect criminal defendants, and guard against perjured testimony. *See* Statement of the Case, *supra* at 5-6. And as the court of appeals recognized, Governor Ray's decision after that "hearing" to refuse to extradite Calder amounted to his "sitting in judgment of Puerto Rico's actions . . . . [and] accusing Puerto Rico of having a sub-standard [system] of criminal justice." App. A7 n.7.

No state should be required to defend its procedures and its commitment to justice before an employee of a sister state's governor, on pain of losing its right to enforce its criminal laws, as the Commonwealth of Puerto Rico was here. Any such procedure brings about the very balkanization and interstate friction which the Extradition Clause was intended to prevent. Such procedures destroy the "harmony and welfare of the States," *Appleyard* v. *Massachusetts*, 203 U.S. at 228, leading to discord in interstate relations, retaliation between states, and animosity between their governors.[8]

---

[8] For example, the refusal by the Governor of New York of a request to extradite a fugitive from Georgia led to a public dispute in which Georgia Governor Richard B. Russell denounced the action as a "deliberate and wanton insult." *See* New York Times, Dec. 23, 1932, p. 7, cols. 1-2; Dec. 28, 1932, p. 36, col. 4. The Governor of New York, attacked as well by Georgia's Congressmen, responded by pointing to prior refusals to extradite by other governors, including Russell himself. *Id.* In another request from Georgia, Massachusetts Governor Hurley's refusal to extradite led to a long-standing personal feud with Georgia Governor Rivers, who retaliated by paroling a prisoner on the condition that the prisoner go directly to Massachusetts. *See* New York Times, Sept. 2, 1937, p. 8, cols. 4-5; Sept. 3, 1937, p. 6, col. 6. *See generally* Note, *Interstate Rendition: Executive Practices and the Effects of Discretion*, 66 Yale L. J. 97, 110-111 & n.74 (1956).

For a more recent example of the discord produced by a refusal to extradite, *see South Dakota* v. *Brown*, 576 P.2d 473, 483 (Cal. 1978) (Mosk, J., dissent-

If Ronald Calder has any defenses to offer, they may be fully presented and litigated in the courts of the Commonwealth of Puerto Rico.[9] This Court has consistently rejected claims

---

ing) (terming California Governor Jerry Brown's refusal to extradite radical Native American activist Dennis Banks, convicted in South Dakota of riot and assault with a deadly weapon, "a contemptuous rebutt to the administration of justice in a sister state and a blow to cooperative law enforcement among states.").

[9] The criminal due process rights of all persons in Puerto Rico are protected by the Federal Constitution to the same extent as in any state of the Union. *See Rivera-Rodriguez* v. *Popular Democratic Party*, 457 U.S. 1, 7-8 (1982) (due process and equal protection as well as all other fundamental guarantees of the United States Constitution apply to Puerto Rico); *Terrol-Torres* v. *Commonwealth of Puerto Rico*, 442 U.S. 465, 469-71 (1979) (due process, equal protection and the constitutional requirements of the fourth amendment apply to the Commonwealth of Puerto Rico). Puerto Rico is a state for the purposes of 42 U.S.C. Section 1983, and the United States District Court for the District of Puerto Rico has jurisdiction under 28 U.S.C. Section 1343(3) to redress the deprivation of rights secured by the Federal Constitution or federal civil rights statutes. *Examining Board* v. *Flores de Otero*, 426 U.S. 572, 580-97 (1976).

The Bill of Rights of the Commonwealth Constitution, adopted by the people of Puerto Rico in 1952 and approved by Congress, 66 Stat. 327, 48 U.S.C. Section 731(c), incorporates all of the guarantees included in the Bill of Rights of the Federal Constitution that are applicable to states, with the only exception being trial by jury for misdemeanors, *see* Constitution of the Commonwealth of Puerto Rico, Art. II, sections 1-20, L.P.R.A. vol. 1 (1982); and even as to this exception, the Puerto Rico Rules of Criminal Procedure provide for jury trial not only in felony cases but also in serious misdemeanor cases where a sentence of 6 months or more may be imposed, as required by this Court for state criminal trials, *see Duncan* v. *Louisiana*, 391 U.S. 145 (1968); *Baldwin* v. *New York*, 399 U.S. 66 (1970); *Apodaca* v. *Oregon*, 406 U.S. 404 (1972). *See* 34 L.P.R.A. App. II R. 111. The substantive and procedural criminal laws of Puerto Rico are similar to those existing in most of the states of the Union. *See* Puerto Rico Penal Code of 1975, 33 L.P.R.A. 3021 to 4628 (1983) and Puerto Rico Rules of Criminal Procedure, 34 L.P.R.A. App. II, R. 1 to 254 (1971). Puerto Rico's judicial system has been described as "an example to be emulated and a model to be followed." Clark and Rogers, *The New Judiciary Act of Puerto Rico: A Definitive Court Reorganization*, 61 Yale L.J. 1147 (1952). *See also* Trias Monge, El Sistema Judicial de Puerto Rico 112-234 (1978); Negron Garcia, *Puerto Rico Updates its Courts*, 58 J. Am. Jud. Soc. 350 (1975).

premised on the assumption that state courts are not capable of fully and effectively protecting constitutional rights. *See, e.g., Stone* v. *Powell,* 428 U.S. 465, 493-94 n.35 (1976). Indeed, in the extradition context, this Court has repeatedly rejected both state and federal courts' attempts, upon review of habeas corpus petitions brought by fugitive criminal defendants, to evaluate the quality of the extraditing state's criminal justice system. *Pacileo* v. *Walker,* 449 U.S. at 86, 87 (holding that "Art. IV, Section 2, cl. 2, and its implementing statute, 18 U.S.C. Section 3182, do not give the courts of the 'asylum' or 'sending' State authority to inquire into the prison conditions of the 'demanding' State"); *Sweeney* v. *Woodall,* 344 U.S. at 90 (holding that a fugitive from Alabama could not raise in the federal courts of Ohio, the asylum state, the constitutionality of his confinement in Alabama because his claims could be fully litigated in Alabama, "where all parties may be heard, where all pertinent testimony will be readily available, and where suitable relief, if any is necessary, may be fashioned.").

Likewise in this case, "[t]o allow plenary review in the asylum state of issues that can be fully litigated in the charging state would defeat the plain purposes of the summary and mandatory procedures authorized by Art. IV, Section 2." *Michigan* v. *Doran,* 439 U.S. at 290. To the extent *Kentucky* v. *Dennison* permits such frustration of the Constitution, it should be reconsidered and overruled.

II. *DENNISON* SHOULD BE RECONSIDERED AND OVERRULED AS AN OUTDATED, NINETEENTH CENTURY VIEW OF THE LIMITS OF FEDERAL POWER.

The ultimate holding of *Kentucky* v. *Dennison* is grounded in legal theories of dual federalism long since abandoned by

this Court. While *Dennison*'s first holding — that the duty to extradite is a mandatory obligation, not a discretionary function — has been repeatedly reaffirmed, *see Pacileo* v. *Walker*, 449 U.S. at 87-88; *Michigan* v. *Doran*, 439 U.S. at 288; *Sweeney* v. *Woodall*, 344 U.S. at 90, its second holding — that the federal government lacks power to enforce the Constitution by compelling state officials to act — has clearly been undermined by the decisions of this Court in the post-Civil War era.

Chief Justice Taney's ruling in *Dennison* cannot be understood apart from the context in which the case was decided: the growing schism between the North and the South over slavery. The fugitive in *Dennison*, Willie Lago, was wanted in Kentucky for aiding a slave in escaping from her owner. Dennison, the Governor of Ohio, a free state, refused to extradite him. An original action was brought in the United States Supreme Court. At the time the case was argued, February 1861, "the states of the Deep South had already proclaimed their secession from the Union, their representatives in Congress had said their farewells, and other states and representatives were about to go." C. Swisher, *History of the Supreme Court of the United States, Vol. V: The Taney Period (1863-64)* 688 (1974). At that troubled moment in our nation's history, there was clearly "an element of unrealism in considering coercion of the states, or of their governors, by the hands of the federal judiciary." *Id.*

Against this background, Chief Justice Taney, writing for the Court, reviewed in detail the history of the extradition clause and concluded that Governor Dennison's refusal to extradite was a clear violation of the duty imposed by the Constitution.[10] In the final pages of the opinion, however, the Court

---

[10] In *Dennison* itself, the asylum state had not claimed total discretion, but only the authority to refuse to extradite where the offense charged in the demanding state was not an offense under the law of the asylum state. Murder and attempted murder do not involve any such controversial activity; they are

nonetheless averted a showdown and denied relief. The ground asserted was an extreme view of the limits of federal power with respect to the states: "[T]he Federal Government, under the Constitution, has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it; for if it possessed this power, it might overload the officer with duties which would fill up all his time, and disable him from performing his obligations to the State, and might impose on him duties of a character incompatible with the rank and dignity to which he was elevated by the State." 65 U.S. at 107-08.

That view had been thoroughly rejected by this Court by the turn of the century. Since *Ex Parte Young*, 209 U.S. 123, 159-160 (1908), the federal courts have assumed the obligation and the responsibility to order state officials to comply with the mandates of the Constitution. In rejecting the claim of the state attorney general to eleventh amendment immunity in *Ex Parte Young*, the Court held that sovereign immunity could not be invoked to shield unconstitutional state action from federal judicial scrutiny: "[The] use of the name of the State to enforce an unconstitutional act . . . is a proceeding without . . . authority . . . which does not affect the State in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting to use the name of the State to enforce a legislative enactment which is void because unconstitutional." *Id.* at 159.

In the decades since that decision, this Court has, time and time again, upheld the authority of federal courts to order local officials to comply with the Constitution, notwithstanding local opposition. *See, e.g.*, *Brown* v. *Board of Education*, 347 U.S. 483 (1954); *Brown* v. *Board of Education II*, 349 U.S. 294

---

universally condemned as crimes. Thus, even under the approach advanced by Ohio in *Dennison*, and rejected by the Court, extradition would be mandatory in the circumstances of this case.

(1955); *Cooper* v. *Aaron*, 358 U.S. 1 (1958). *See also United States* v. *Nixon*, 418 U.S. 683, 704 (1974) (power vested in the federal courts cannot be shared with the Executive). Claims that such decisions burdened the exercise of local functions have been rejected. The Court has repeatedly reaffirmed that federal courts may, if necessary, require local officials "to exercise the power that is theirs to levy taxes to raise funds" adequate to remedy constitutional violations. *Griffin* v. *Prince Edward County School Board*, 377 U.S. 218, 233 (1964). *See also Swann* v. *Charlotte Mecklenburg Board of Education*, 402 U.S. 1 (1971). It has directed federal courts to order local officials to reorganize state legislative bodies, *Reynolds* v. *Sims*, 377 U.S. 533 (1964), and restructure local governmental units, *Hadley* v. *Junior College District*, 397 U.S. 50 (1970), to meet constitutional requirements. In each of these areas, it bears emphasizing, federal courts have done precisely what Chief Justice Taney in *Dennison* said that the federal government may not do: ordered state officers to conduct their business and perform their duties consistent with the Constitution.

Indeed, even where what is at stake is a law passed by Congress rather than a constitutional duty, and even where the state has claimed reserved power under the Constitution itself, this Court has rejected the sort of limits on federal power which *Dennison* would demand. The insistence that states must in all circumstances be viewed as coequal sovereigns with the federal government — the "dual federalism" approach that characterized the Taney Court's approach in *Dennison*, as in *Dred Scott* v. *Sandford*, 60 U.S. (19 How.) 393 (1857) and *New York* v. *Miln*, 36 U.S. (11 Pet.) 102 (1837) — was firmly laid to rest by the decisions of this Court upholding congressional legislation enacted during the New Deal. *See, e.g.*, *Wickard* v. *Filburn*, 317 U.S. 111 (1942); *United States* v. *Darby*, 312 U.S. 100 (1941); *Steward Machine Co.* v. *Davis*,

301 U.S. 548 (1937); *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

More recently, in *FERC* v. *Mississippi*, 456 U.S. 742 (1982), this Court rejected a state challenge to the right of Congress to order state officials to consider federal standards and follow federally-imposed procedures in regulating public utilities. The state's argument relied explicitly on Chief Justice Taney's language in *Kentucky* v. *Dennison*. Characterizing that approach as a "rigid and isolated statement" from a "well-known slavery case" which "is not representative of the law today," the Court emphasized the many instances "where the Court has upheld federal statutory structures that in effect directed state decisionmakers to take or to refrain from taking certain actions." 456 U.S. at 762, citing *Fry* v. *United States*, 421 U.S. 542 (1975); *Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979); *Testa* v. *Katt*, 330 U.S. 386, 393 (1947). The "language and analysis of the *Dennison* case of the preceding century," the Court concluded, has been "clearly cut back." 456 U.S. at 762-63.

Finally, only last Term, this Court in *Garcia* v. *San Antonio Metropolitan Transit Authority*, 105 S.Ct. 1005 (1985), rejected the claim of a local transit authority to immunity from federally imposed minimum wage and pay provisions. In the process, this Court not only overruled prior efforts to limit federal power under the Commerce Clause by isolating the "traditional governmental functions" of states, but also concluded that the structure of the federal government itself was the means chosen by the Framers to secure the role of states. *Id.* at 1016-20. The rationale for *Dennison* — the fear that absent the restraints of dual federalism, federal power might be used to "overload" the state officer with duties, to "disable him from performing his obligations," to impose duties beneath his "rank and dignity," 65 U.S. at 107-08 — stands squarely

rejected by this Court's recognition that state sovereign interests "are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." 105 S.Ct. at 1018.

The case for the exercise of federal power in this context is even stronger than in either *FERC* v. *Mississippi* or *Garcia*. First, what is at stake here is not an act of Congress, as in those cases, but a mandate of the Constitution. Second, what is involved is not a realm of discretionary state authority, like utility regulation or wage scales for state employees, but a mandatory and ministerial duty to comply with valid extradition requests. Third, and most important, it is the *absence* of federal power that threatens the autonomy of each state to enforce its criminal laws. However the limits which state sovereignty imposes on federal power are ultimately defined, *see Garcia* v. *San Antonio Metropolitan Transit Authority*, 105 S. Ct. at 1015-20; *id.* at 1038 (O'Connor, J., dissenting), they must surely permit, and indeed require, the exercise of federal power to compel extradition. For far from intruding on any state sovereignty arguably protected by the tenth amendment, federal power here is essential to ensure that the mandatory commands of the Constitution, intended to protect the sovereignty of each state to bring to trial those who violate its criminal laws, are followed.

Dennison's view of the limits of federal power is, as this Court has recognized, a "19th-century view." *FERC* v. *Mississippi*, 456 U.S. at 761. Yet while it has been abandoned in virtually every other context, it continues to frustrate the effectuation of the purposes of the Extradition Clause. Until *Dennison* is reconsidered and overruled, the rights of every state to secure the enforcement of its criminal laws are in jeopardy. *Dennison* shields every refusal to extradite from judicial scrutiny — no matter how arbitrary, how insulting to a state's integrity, how offensive to norms of comity, or how racist that refusal may

be. It precludes the federal courts, and this Court, from serving as the needed referee in such disputes between the states, and from assuring that the Framers' purpose in including the Extradition Clause — that no state become an asylum for fugitives from justice — is served. Until *Dennison* is overruled, Ronald Calder, properly charged with murder five years ago, can refuse to answer those charges with impunity, having found an asylum in Iowa, and there is absolutely nothing that Puerto Rico can do to bring him to trial.

CONCLUSION

The court of appeals affirmed the denial of mandamus relief with the greatest reluctance. Speaking for a unanimous court, Judge Timbers wrote:

> Despite our firm belief in the proper role of the inferior federal courts in adhering to and not seeking to avoid controlling Supreme Court precedent, we cannot emphasize too strongly our deep conviction that the underpinnings of *Dennison* during the past 125 years have been so seriously undermined — especially in view of the mandatory provision of the extradition clause of the Constitution — as to suggest reconsideration by the only Court empowered to do so. Perhaps the extradition principles articulated in *Dennison* are in the category so aptly described by Judge Cardozo as being infused with "the doubts and misgivings, the hopes and fears, [all] part of the travail of mind, the pangs of death and the pangs of

birth, in which principles that have served their day expire, and new principles are born."

App. A9. Petitioner Commonwealth of Puerto Rico respectfully urges this Court, "the only Court empowered to do so," to reconsider and overrule *Kentucky* v. *Dennison*.

Respectfully submitted,

HECTOR RIVERA CRUZ
Secretary of Justice
Commonwealth of Puerto Rico

RAFAEL ORTIZ CARRION
Solicitor General
Commonwealth of Puerto Rico

LINO J. SALDANA
Counsel of Record
SALDANA, REY, MORAN
& ALVARADO
P.O. Box 13954
Santurce, Puerto Rico 00908
(809) 721-6345

SUSAN ESTRICH
KATHLEEN M. SULLIVAN
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-4613
Attorneys for Petitioner

June 23, 1986

APPENDIX

TABLE OF CONTENTS

PAGE

APPENDIX A

Opinion of the United States Court of Appeals for the Eighth Circuit, entered March 28, 1986 A1

APPENDIX B

Order of the United States District Court for the Southern District of Iowa, entered May 22, 1985 A10

APPENDIX C

Judgment of the United States Court of Appeals for the Eighth Circuit, entered March 28, 1986 A16

APPENDIX D

Selected portions of record below:

1. Stipulation of Facts, filed in the district court December 3, 1984 A17
2. The Extradition Request by the Governor of Puerto Rico, dated May 15, 1981 A22
3. Documents appended to the Extradition Request:
   a. Arrest warrant, dated March 4, 1981 A24
   b. Fugitive resolution, dated April 13, 1981 A25
   c. Arrest Warrant, dated April 13, 1981 A27
   d. Information charging first-degree murder, dated February 27, 1981 A28

PAGE

e. Information charging attempted murder, dated February 27, 1981 A31

f. Sworn statement of Antonio De Jesus Gonzalez, dated January 26, 1981 A34

g. Sworn statement of Rosa I. Marrero, dated January 28, 1981 A38

h. Sworn statement of Antonio De Jesus Gonzalez, dated May 14, 1981 A42

4. Denial of Extradition Request by the Governor of Iowa, dated December 28, 1981 A44

APPENDIX A

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 85-1793

Commonwealth of Puerto Rico,	*	
	*	
Plaintiff-Appellant,	*	Appeal from the
	*	United States District
v.	*	Court for the Southern
	*	District of Iowa,
Terry E. Branstad, et al.,	*	Central Division.
	*	
Defendants-Appellees.	*	

Submitted: February 14, 1986
Filed: March 28, 1986

Before ARNOLD, FAGG and TIMBERS,* Circuit Judges.

TIMBERS, Circuit Judge.

The Commonwealth of Puerto Rico ("appellant") appeals from a judgment entered May 22, 1985 in the Southern District

---

*The Hon. William H. Timbers, Senior United States Circuit Judge for the Second Circuit, sitting by designation.

of Iowa, Donald E. O'Brien, *District Judge*, denying appellant's petition for a writ of mandamus to compel Terry E. Branstad, the Governor of Iowa ("appellee"), to extradite Ronald Calder to Puerto Rico, and dismissing the complaint. In denying the petition and dismissing the complaint, the district court relied on *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66 (1861), where the Supreme Court held that the federal judiciary lacks the power to compel a state governor to perform his ministerial duty to extradite a fugitive upon receiving a valid demand.

On appeal, appellant recognizes that *Dennison* is controlling. It argues, however, that *Dennison* is no longer binding on the lower federal courts because it is premised on a defunct theory of federalism and the Supreme Court would overrule *Dennison* if the same issue were presented to the Court today.

We are constrained to hold that appellant has failed to establish that the Supreme Court would overrule *Dennison* if the same issue were presented to the Court today. Accordingly, we hold that the district court correctly held that it lacked the power to issue a writ of mandamus compelling appellee to extradite Calder, even though appellant's extradition request met all constitutional requirements. Reluctantly, we affirm.

I.

We summarize only those facts believed necessary to an understanding of the issues raised on appeal.

The Commonwealth of Puerto Rico has charged Calder with murder and attempted murder. The charges arose out of an altercation in a parking lot in Aguadilla, Puerto Rico, on January 25, 1981. Calder is charged with having run over Antonio de Jesus Gonzalez and his pregnant wife more than once. The woman and her baby died shortly thereafter.

Several hours after the incident, Calder was charged with homicide and released on bail. When Calder subsequently failed to appear for several preliminary hearings, he was declared a fugitive from justice and an arrest warrant was issued. An investigation by the Puerto Rican authorities established that Calder in mid-April 1981 had returned to his native state of Iowa.[1]

On May 15, 1981, the Governor of Puerto Rico, Carlos Romero Barcelo, formally requested the extradition of Calder from the then Governor of Iowa, Robert D. Ray, pursuant to Art. IV, § 2, cl. 2 of the United States Constitution and the Extradition Act, 18 U.S.C. § 3182 (1982). Although the extradition request complied with all constitutional and statutory requirements,[2] the Governor of Iowa, after hearing evidence, denied the extradition request on December 28, 1981. In so doing, he stated that he felt that the first degree murder charge was too severe and that a charge of manslaughter was more justifiable. Thereafter, appellant renewed its extradition request to appellee, Governor Branstad, who succeeded Robert Ray as Governor. Governor Branstad also refused to extradite Calder.

Faced with appellee's adamant refusal to extradite Calder, appellant commenced the instant action requesting the district court to issue a writ of mandamus directing appellee to perform his ministerial duty of granting extradition and delivering Calder to the Puerto Rican authorities.[3] The complaint alleged

---

[1] On April 13, 1981, the Puerto Rican police notified the Polk County, Iowa, Sheriff's office that Calder was a fugitive wanted for murder and attempted murder in Puerto Rico, and extradition papers would follow. On April 24, 1981, Calder surrendered to the jurisdiction of the local court in Polk County.

[2] Under the Extradition Act, the demanding-state governor must produce an affidavit or indictment charging the demanded fugitive with a crime, and he must personally certify its authenticity. 18 U.S.C. § 3182 (1982).

[3] Appellant also sought declaratory relief to the effect that, in denying extradition, the Governor of Iowa considered matters not allowed by the Constitution.

that appellee had breached his ministerial duties mandated by the extradition clause of the Constitution in refusing to extradite Calder upon receiving a valid demand.

Appellee filed a motion to dismiss in the district court, claiming that *Dennison, supra,* precluded the issuance of a writ of mandamus because in *Dennison* the Supreme Court had held expressly that a governor could not be compelled to perform his duty to extradite. Appellant acknowledged that *Dennison* is controlling, but argued that *Dennison* is no longer binding on the lower federal courts because it is predicated on pre-civil war concepts of state sovereignty. Appellant further argues that the Supreme Court would overrule *Dennison* if confronted with the same issue today.

On May 22, 1985, the district court entered a judgment denying the writ of mandamus and dismissing the complaint on the ground that it could not be said with certainty that the Supreme Court would overrule *Dennison* if the same issue were presented today.

II.

In *Dennison, supra,* 65 U.S. at 95-110, the Supreme Court, in an opinion by Chief Justice Taney, examined the extradition process provided for in the extradition clause of the Constitution, Art. IV, § 2, cl. 2,[4] and the Extradition Act, 18 U.S.C. § 3182.[5]

The district court dismissed the declaratory judgment claim on the ground that the issuance of a declaratory ruling would do little to settle the controversy over the extradition of Calder. Appellant withdrew its declaratory judgment claim on appeal.

[4] The Extradition Clause of the Constitution provides:

> "A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

[5] The Extradition Act of 1793, which has remained virtually unchanged since it was enacted, provides:

The Governor of Kentucky in *Dennison* sought a writ of mandamus to compel the Governor of Ohio (named Dennison) to extradite Willis Lago, a "free man of color", who had been indicted by a Kentucky grand jury for the crime of assisting a slave to escape from his master and was a fugitive from justice. Governor Dennison refused to extradite Lago because his action were not illegal under Ohio law.

The Supreme Court declined to issue the writ. In declining to do so, the Court established what strike us as two contradictory rules. First, the Court held that a governor's duty to extradite, as established by the Constitution and the Act of 1793, was "ministerial". In defining the nature of this "ministerial" duty, the Court stated that it was a mandatory duty that required an asylum state governor to extradite upon demand. *Dennison, supra* 65 U.S. at 106. The Court recognized that an asylum state's governor has "no right to look behind [the extradition request], or to question [it], or to look into the character of the crime specified in the judicial proceedings." *Id.*

Second, having concluded that a governor's duty to extradite is mandatory and that an asylum state's governor is foreclosed from exercising any discretion in carrying out that duty, the Court nevertheless denied the writ because it found that the Act of 1793 did not provide a means to compel execution of the

---

"**Fugitives from State or Territory to State, District or Territory**

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged."

duty. "The act does not provide any means to compel the execution of this duty, nor inflict any punishment or neglect or refusal on the part of the Executive of the State; nor is there any clause or provision in the Constitution which arms the Government of the United States with this power." *Dennison, supra,* 65 U.S. at 107. Thus, the Court's decision sanctioned a hybrid duty — mandatory in nature but unenforceable in practice. Note, *Interstate Extradition: Should the Asylum State Governor Have Unbridled Discretion,* 1980 B.Y.U. L. Rev. 576.

In recent times, the Supreme Court has reaffirmed the first part of the *Dennison* holding. *Michigan* v. *Doran,* 439 U.S. 282, 288 (1978) ("Interstate extradition was intended to be a summary and mandatory executive proceeding derived from the language of Art. IV, § 2, cl. 2, of the Constitution.") But the Court has never again ruled squarely on the second issue — judicial enforcement of the duty of an asylum state governor to extradite.[6]

Appellant acknowledges that *Dennison* controls this case, but argues that the lower federal courts are no longer bound by *Dennison*. Appellant claims that the Supreme Court would overrule the second part of *Dennison* if presented with same issue today because it is based on pre-civil war concepts of federal-state relations that no longer are viable in present-day views of federalism. Appellant points out that *Dennison* was decided on the eve of the civil war, at a time when a bitter debate raged in the country between exponents of state sovereignty and advocates of a strong federal government. Appellant suggests that in view of such a climate the Court had no choice but to decide *Dennison* as it did. Accordingly, appellant invites us to depart from the second part of the *Dennison* holding. We decline the invitation.

---

[6] In the post-civil war case of *Taylor* v. *Taintor,* 83 U.S. (16 Wall) 366, 370 (1873) the Court in dicta reaffirmed the second part of the *Dennison* holding.

Although appellee had acted in clear contravention of the Constitution in refusing extradition because he questions the severity of the crime specified in appellant's extradition request,[7] we nevertheless are constrained to follow the Supreme Court decision in *Dennison*.

III.

It is well established that Supreme Court decisions are binding on the lower federal courts. It has been suggested that a narrow exception exists when there is strong evidence that the Supreme Court would overrule its prior holding if it had the opportunity to do so. *Minority Police Officers Ass'n* v. *City of South Bend*, 721 F.2d 197, 201 (7th Cir. 1983). Whether or not this is sound judicial policy, we need not decide, for appellant has failed to establish such evidence with respect to *Dennison*.

To support its claim that *Dennison* is no longer good law, appellant relies primarily on dicta in *FERC* v. *Mississippi*, 456 U.S. 742 (1982). In *FERC*, the State of Mississippi challenged provisions of the Federal Public Utility Regulatory Policies Act of 1978 ("PURPA"), which required state utility regulatory commissions and nonregulated utilities to consider the adoption of various approaches to rate structures, terms and conditions of service and regulatory procedures. The Act also authorized the Federal Energy Regulatory Commission ("FERC"), in consultation with state regulatory authorities, to promulgate rules to develop cogeneration and small power facilities. The Act also gave FERC the authority to exempt cogeneration and

---

[7] By refusing to extradite Calder, appellee is sitting in judgment on Puerto Rico's actions. In effect, he is accusing Puerto Rico of having a sub-standard of criminal justice. Appellee's actions may lead to retaliatory denials. *See* Note, *Interstate Rendition: Executive Practice and the Effects of Discretion*, 66 Yale L. Rev. 97 (1956). The Framers sought to avoid such interstate friction by couching the extradition clause of the Constitution in mandatory language.

small power facilities from certain state and federal regulations. Petitioners claimed the PURPA was unconstitutional because it constituted an invasion of state sovereignty in violation of the Tenth Amendment.[8]

In holding that PURPA did not violate the Tenth Amendment, the Supreme Court in *FERC* rejected the concept enunciated by the Court in *Dennison* that "the States and the Federal Government in all circumstances must be viewed as coequal sovereigns". *FERC, supra,* 456 U.S. at 761. The *FERC* Court characterized as "rigid" and "isolated" the statement in *Dennison* that Congress " 'has no power to impose on a state officer, as such, any duty whatever, and compel him to perform it.' " *Id.* at 761, *quoting Dennison, supra,* 65 U.S. at 107. The *FERC* Court concluded that, based on modern-day concepts of federalism, "the Federal Government has some power to enlist a branch of state government . . . to further federal ends." *Id.* at 762.

While it is true that the above dicta in *FERC* seem to erode to some extent the underpinnings of *Dennison,* the *Dennison* specific holding that federal courts have no power to compel a state governor to extradite has not been overruled. Rather, *Dennison* is left as an anomaly, to be applied only in the context of extradition.[9] *See Ex Parte Virginia,* 100 U.S. 339,

---

[8] The petitioners also claimed unsuccessfully that PURPA exceeded congressional power under the commerce clause.

[9] Recently state courts and commentators have supported the result reached in *Dennison,* largely because the concept of executive discretion in the exercise of the extradition power is so widely accepted among governors. *State of South Dakota* v. *Brown,* 144 Cal. Rptr. 758, 763-64, 576 P.2d 473, 481-82 (1978) (en banc); Note, *Interstate Extradition: Should the Asylum State Governor Have Unbridled Discretion, supra,* at 5. Note, *Rendition: The Governor's Discretion,* 2 Lincoln L. Rev. 48 (1966); Comment, *Interstate Rendition: Executive Practice and the Effects of Discretion, supra,* note 7.

Likewise, in the area of international extradition there has long been an unfortunate dragging of feet on the part of the asylum nation which too often seeks to superimpose its notions of judicial fairness on those of the extraditing

348 (1879) ("remarks made in *Kentucky* v. *Dennison* and in *Collector* v. *Day*, though entirely just as applied to the cases in which they were made, are inapplicable to the case we have now in hand"). Accordingly, we are constrained to hold that *Dennison* controls the instant case.

IV.

To summarize: We hold that appellee acted in clear contravention of the Constitution in looking behind appellant's valid extradition request. Since appellant, however, has failed to establish that the Supreme Court would overrule *Dennison*, we hold that the district court correctly held that it lacked the power to issue a writ of mandamus to compel the Governor of Iowa to extradite Calder to the Commonwealth of Puerto Rico, despite Puerto Rico's valid extradition request.

Despite our firm belief in the proper role of the inferior federal courts in adhering to and not seeking to avoid controlling Supreme Court precedent, we cannot emphasize too strongly our deep conviction that the underpinnings of *Dennison* during the past 125 years have been so seriously undermined — especially in view of the mandatory provision of the extradition clause of the Constitution — as to suggest reconsideration by the only Court empowered to do so. Perhaps the extradition principles articulated in *Dennison* are in the category so aptly described by Judge Cardozo as being infused with "the doubts and misgivings, the hopes and fears, [all] part of the travail of mind, the pangs of death and the pangs of birth, in which pinciples that have served their day expire, and new principles are born."[10]

Affirmed.

---

nation, *E.g.*, Timbers and Pollack, *Extradition From Canada To The United States For Securities Fraud: Frustration Of The National Policies Of Both Countries*, 24 Fordham L. Rev. 301 (1955).

[10] Cardozo, The Nature Of The Judicial Process 167 (Yale University Press 1921).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Commonwealth of Puerto Rico,	)	
	)	
Plaintiff,	)	
	)	Civil No.
vs.	)	84-126-E
	)	
Terry E. Branstad and	)	ORDER
State of Iowa,	)	
	)	
Defendants.	)	

[Entered May 22, 1985]

This complaint for a writ of mandamus and declaratory judgment comes before the Court on a stipulated record. Also pending is the defendants' motion to dismiss filed March 6, 1984. Arguments were heard by the Court in Des Moines, Iowa on February 27, 1985. The Court deems these matters fully submitted. For the reasons stated below, the writ of mandamus is denied and the motion to dismiss is granted.

I.

The Governor of Iowa has reused a formal request for the extradition of Ronald Calder from the Governor of Puerto Rico. Puerto Rico argues that this Court should issue a writ of mandamus to compel the Governor of Iowa to extradite Mr. Calder. Puerto Rico admits that there is undisturbed Supreme Court precedent which squarley rejects the claim that man-

damus could issue to compel a state governor to perform his constitutional obligation under the Extradition Clause. *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66 (1861). Nonetheless, Puerto Rico argues that this Court need not follow *Dennison* because if the Supreme Court were faced with the same issues today, it would certainly overrule the *Dennison* holding. Plaintiff asserts that modern notions of federalism give federal courts the power to impose and enforce constitutional obligations on state officials and, thus, the rationale employed in *Dennison* would not survive scrutiny today.

A.

In *Dennison*, the Supreme Court was required to interpret the Extradition Clause of the United States Constitution (Article IV, section 2, clause 2), which provides:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

First, the Supreme Court interpreted the Extradition Clause as imposing on the asylum state's governor a mandatory duty to extradite upon demand. *Kentucky* v. *Dennison*, 65 U.S. (24 How.), at 106. Second, however, the Supreme Court ruled that neither the Extradition Clause nor the federal legislation implementing it gave the judiciary the power to enforce the constitutional obligation to extradite. *Id.*, at pp. 107-110. Instead, the execution of this constitutional duty is dependent on the fidelity of the state executive to the federal constitution.

Even after the Civil War and the passage of the Fourteenth Amendment, the Supreme Court continued to recognize the proposition that "there is no means of compulsion" when a governor refuses to extradite a fugitive. *Taylor* v. *Taintor*, 83 U.S. (16 Wall.) 366, 370 (1872).

B.

The issue presented by plaintiff to this Court is whether or not the Supreme Court would overrule *Dennison* and *Taylor* v. *Taintor* and hold that a federal court does have the power to compel a governor to perform his mandatory constitutional duty to extradite a fugitive to a demanding state. In other words, is the rule established in *Dennison* so out of touch with modern legal thinking that this Court is not bound to follow it? The answer to this question is no; this court is not convinced that the Supreme Court would overrule *Dennison*.

The most recent decision regarding the power to enforce the federal constitutional duty to extradite involved Governor Jerry Brown's refusal to extradite Dennis Banks from California to South Dakota. In that case, the Supreme Court of California held

> that while the federal Constitution imposes upon the Governor a mandatory obligation to extradite a fugitive to a demanding state, the Constitution does not empower the courts, federal or state, to enforce that duty by writ of mandate. No case has so held. Rather, the Constitution leaves the faithful execution of the extradition obligation in the hands of the state executive, trusting, in the words of *Dennison,* in the Governor's "fidelity" to the federal Constitution.

State of South Dakota v. *Brown,* 144 Cal. Rptr. 758, 576 P.2d 473, 477 (1978) (in bank). That court also held that state law did not empower state courts to enforce the duty to extradite. In addition, the court in *Brown* noted the general acceptance of the practice of governors of California to occasionally decline to honor a demand for extradition and the reciprocal practice of other governors to decline requests made by the California governor for extradition. Finally, the court stated:

> [S]everal considerations of public policy support and commend an interpretation of the Extradition Act permitting the Governor to exercise some discretion in refusing extradition in an appropriate case. Doubtless, individual circumstances surrounding extradition demands are varied and diverse, thus rendering peculiarly inappropriate the mechanical application of fixed and absolute rules if justice is to be achieved in a particular case.
>
> * * *
>
> We are satisfied . . . that as a matter of public policy courts may not enforce the Governor's duty to comply with extradition demands. Although that duty may be considered mandatory in nature under the constitutional and statutory provisions discussed above, in unusual cases a potential miscarriage of justice may call for that discretionary exercise of "sound judgment." We would not serve the ends of justice if we attempted judicial interference with the Governor's discretion.

State of South Dakota v. *Brown*, 576 P.2d, at 482.

While it is true that jurisprudence regarding the role and power of federal courts has changed a great deal since the Civil War and the passage of the Fourteenth Amendment, it does not necessarily follow that all of the results reached by the court that decided *Dred Scott* on issues regarding the power of federal courts would be reversed today. In other words, the holding in *Dennison* may have a modern-day rational which would result in it being followed by the present Supreme Court. The decision of the Supreme Court of California in *State of South Dakota* v. *Brown* indicates that there are present-day policies which support the holding in *Dennison*. Furthermore, the experience and practice over the past 120 years would

undoubtedly carry a great deal of weight if the present Supreme Court were to rethink *Dennison*.

Accordingly, this District Court cannot say with certainty that the Supreme Court would overrule *Kentucky* v. *Dennison* if confronted with the mandamus issue today. Thus, this Court will follow the holding of *Kentucky* v. *Dennison* and deny the request for a writ of mandamus.

II.

In the alternative, the plaintiff prays for a declaratory judgment to the effect that extradition cannot be denied on grounds not set out in the Constitution or 18 U.S.C. § 3182, the federal statute which implements the extradition clause of the Constitution.

The Federal Declaratory Judgment Act, 28 U.S.C. § 2201, provides:

> In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Under this provision, litigants do not have an absolute right to be heard. Rather,

> [i]t is well established that the Declaratory Judgment Act, 28 U.S.C. § 2201, granted the federal courts discretion "to make a declaration of rights; it did not impose a duty to do so." (Cites omitted).

Alsager v. *District Court of Polk County, Iowa,* 518 F.2d 1160, 1163 (8th Cir. 1975). With respect to the exercise of this discretion, 10A Wright & Miller, *Federal Practice and Procedure:* Civil 2d § 2759, states:

> It is always the duty of the court to strike a proper balance between the needs of the plaintiff and the consequences of giving the desired relief. The Courts have often quoted with approval Professor Borchard's formulation that:
>
> > The two principal criteria guiding the policy in favor of rendering declaratory judgments are (1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.
> >
> > One of the most important considerations that may induce a court to deny declaratory relief is that the judgment sought would not settle the controversy between the parties. (Footnotes omitted).

During argument, counsel for plaintiff stated that declaratory relief was being sought on the hope that once a federal court declared the duties impose by the Constitution, the Governor of Iowa would change his position. The Court finds that the issuance of a declaratory ruling would do little to settle the controversy of the extradition of Mr. Calder. Thus, this Court is well within its discretion in denying the prayer for declaratory relief.

IT IS THEREFORE ORDERED that the application for a writ of mandamus is denied.

IT IS FUTHER ORDERED that the motion to dismiss the declaratory judgment claim is hereby granted. Each party shall bear its own costs.

May 21, 1985.

Donald E. O'Brien, Judge
UNITED STATES DISTRICT COURT

APPENDIX C

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

JUDGMENT

No. 85-1793SI

Commonwealth of Puerto Rico,	*	
	*	
Appellant,	*	
	*	Appeal from the
vs.	*	United States District
	*	Court for the Southern
Terry E. Branstad, et al,	*	District of Iowa
	*	
Appellees.	*	

[Entered March 28, 1986]

This appeal from the United States District Court was submitted on the record of the said district court, briefs of the parties and was argued by counsel.

Upon consideration of the premises it is hereby adjudged and decreed that the judgment of the district court is affirmed in accordance with the opinion of this Court.

March 28, 1986

A true copy.

ATTEST: s/ Robert D. St. Vrain

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Commonwealth of Puerto Rico,	)	
	)	
Plaintiff,	)	
	)	Civil Action
v.	)	No. 84-126-E
	)	
Terry E. Branstad and	)	
the State of Iowa,	)	
	)	
Defendants.	)	

STIPULATION OF FACTS

[Filed December 3, 1984]

Come now the plaintiff, the Commonwealth of Puerto Rico, and the defendants, Terry E. Branstad and the State of Iowa, and by counsel do stipulate to the following facts:

1. On or about January 25, 1981 in Aguadilla, Puerto Rico, Army Villalba De Jesus, who was then eight months pregnant was struck by a car driven by Ronald Calder. Her husband, Antonio de Jesus Gonzales, was also struck by Calder's car.

2. Army Villalba and the unborn child died on January 25, 1981.

3. Some hours after the incident, Ronald Calder was brought before Municipal Judge Jose Moreno Babilonia, who found probable cause to charge him with homicide. Calder was rep-

resented by counsel, Carlos Hernandez Perez. Bail was set at $5,000.00 and Calder was released.

4. On February 4, 1981, the case was submitted by the District Attorney to Judge Benito Diaz Laureano for a determination of probable cause for first degree murder and attack with intent to commit murder. *See* Exhibit A.

5. Two lawyers appeared in Calder's defense at the probable cause hearing.

6. Sworn witnesses testified at the February 4th hearing that Calder deliberately attempted to run down Antonio de Jesus Gonzales and Army Villalba in the parking lot of a grocery store after an argument between Calder and de Jesus Gonzales.

7. The witnesses also testified that Calder ran over Army Villalba more than one time.

8. On February 4, 1981, the district court found probable cause to accuse Calder with attack to commit murder and first degree murder with bail set at $5,000 and $10,000.00 respectively. Upon deposit of $5,000.00 cash, Calder was released. *See* Exhibits B and C.

9. On February 4, 1981, Calder signed a copy of the notice summoning him for a preliminary hearing to take place on March 4, 1981.

10. Calder did not appear at the preliminary hearing on March 4, 1981. Bail was increased to $50,000. *See* Exhibit D. (Court document and translation).

11. At the March 4th hearing, the court held that Calder has waived his right to a preliminary hearing due to his absence.

12. On April 2, 1981, Calder's attorneys William Kutmus and Mark Pennington appeared in the office of the District Attorney for Aguadilla and agreed that Calder would appear for a preliminary hearing on April 13, 1981.

13. Calder failed to appear at the preliminary hearing on April 13, 1984.

14. On April 13, 1981, after an unsuccessful search for Calder in various locations, including his established domicile, the court declared the defendant a fugitive from justice, set his bail at $300,000.00 and issued a warrant for his arrest. *See* Exhibits E. (Court document and translation).

15. On April 13, 1981, the Puerto Rican Police notified the Polk County, Iowa Sheriff's Office that Ronald Calder was a fugitive wanted for murder and attempted murder in Puerto Rico. *See* Exhibit F.

16. On April 24, 1981, Calder, with his attorney, surrendered to the jurisdiction of the local court in Polk County, Iowa.

17. On April 24, 1981, Calder posted the $20,000.00 bond set by an Iowa magistrate and was released.

18. On May 15, 1981, Governor Romero Barcelo of Puerto Rico submitted to Governor Robert D. Ray of Iowa a formal request for the extradition of Ronald Calder. *See* Exhibit G.

19. Included in the request were the following documents: an arrest warrant, *See* Exhibit E; a fugitive resolution, *See* Exhibit E; an accusation for first degree murder, *See* Exhibit B; an accusation for attack to commit murder, *See* Exhibit C; and three sworn statements establishing probable cause, one of which identified a photograph of Calder to be that of the fugitive. See Exhibits H, I and J.

20. Counsel for Calder requested an extradition hearing, *See* Exhibit K, and Governor Ray ordered that such a hearing be held on June 17, 1981, *See* Exhibit L.

21. The extradition hearing was conducted by Brice Oakley, legal counsel to Governor Ray. Witnesses for the fugitive were William Kutmus, Mark S. Pennington, Gene Miller and Ronald Calder. *See* Exhibit M. (Exhibit M is a transcript of the first of two tapes made during the hearing. The second tape was destroyed and no record of the later part of the hearing exists).

22. Counsel for Puerto Rico, Eduardo de Jesus Garcia, objected to the form and content of all the evidence presented on behalf of Calder as beyond the scope of extradition hearings as provided by the Uniform Criminal Extradition Act, § 4 (codified at Iowa Code § 820.20).

23. In post-hearing briefs filed with Mr. Oakley on June 24, 1981, the State of Iowa conceded that the extradition request was in proper form and met all statutory documentary requirements, and the parties do hereby stipulate the same.

24. On July 23, 1981, Roberto Buono Grillasca of the Puerto Rico Department of Justice, requested that they be provided with a transcript of the hearing tapes. *See* Exhibit N.

25. On March, 18, 1982, Brice Oakley informed the Attorney General's Office that the second of two tapes had been destroyed in the duplicating process. The first tape was sent to Puerto Rico. See Exhibit O.

26. After the extradition hearing, representatives for Calder and the District Attorney in Puerto Rico attempted to work out a plea bargain agreement. These negotiations ultimately failed because of a fundamental disagreement on the terms. Calder insisted that the "bargain" be guaranteed in writing prior to his return to Puerto Rico. Puerto Rico's position was that the law of criminal procedure in Puerto Rico does not invest the district attorney with the authority to guarantee a plea agreement. Puerto Rico believed the charges had to be reduced and a plea entered by a judge upon the defendant's appearance before him. Calder's attorneys believed a written agreement could be enforced in Puerto Rico as in most American jurisdictions. *See* Exhibit P.

27. Governor Ray and Governor Romero Barcelo also attempted to aid in negotiating a resolution of the matter. However, these attempts were unsuccessful and on December 28, 1981, Governor Ray informed Governor Romero Barcelo of his

decision to deny the request for extradition of Ronald Calder. *See* Exhibit Q.

28. Puerto Rico renewed its extradition request to Governor Terry E. Branstad after he succeeded Robert Ray as Governor of Iowa. Governor Branstad denied the request.

Respectfully submitted,

s/

Kathleen Heenan McGuan
Jerris Leonard
Law Office of Jerris Leonard, P.C.
900 17th St., N.W., Suite 1020
Washington, D.C. 20006
(202) 872-1095

Counsel for Plaintiff

s/

Brent Appel, Esquire
Assistant Attorney General
13th & Walnut Streets
Hoover State Office Building
Des Moines, IO 50319
(809) 763-0106

Counsel for Defendants

[Selected Exhibits reprinted on following pages]

[Exhibit G]

EXECUTIVE CHAMBER

THE GOVERNOR OF THE COMMONWEALTH OF PUERTO RICO

TO THE GOVERNOR OF THE STATE OF IOWA

WHEREAS: It appears by the papers required by the Statute of the Commonwealth of Puerto Rico which are hereunto annexed, and which I certify to be authentic and duly authenticated in accordance with the Laws of this Commonwealth, that

RONALD CALDER JOHNSON

stands charged, and is pending trial for the crimes of First Degree Murder and Attempted Murder, which I certify to be crimes under the Laws of this Commonwealth, and it having been represented to me that a court of justice in this jurisdiction has determined that there is a probable cause to try the defendant for the crimes he has been accused of, and that he was present in the Island of Puerto Rico at the time of the commission of these crimes and is now a fugitive from the Justice of this Commonwealth.

NOW THEREFORE: Pursuant to the provisions of the Constitution and Laws of the United States in such case made and provided, I do hereby require that

RONALD CALDER JOHNSON

be delivered to MESSRS. ROBERTO BUONO GRILLASCA, EDUARDO A. DE JESUS GARCIA, JOSE A. FLORES and ARMANDO TAPIA, Special Agents who are hereby author-

ised to receive and convey him to the Commonwealth of Puerto Rico, here to be dealt with according to Law.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the Commonwealth of Puerto Rico to be affixed, in the City of San Juan, this 15th day of MAY, A.D., nineteen hundred and eighty-one.

CARLOS ROMERO BARCELO
Governor

ATTEST: s/

Under Secretary of State

[Exhibit D]

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPERIOR COURT
AGUADILLA PART
Office of Judge of Peace

THE UNITED STATES OF AMERICA THE PRESIDENT OF THE UNITED STATES THE PEOPLE OF PUERTO RICO	CRIMINAL NO. G81-90- y 91 FOR ATTACK TO COMMIT MURDER AND MURDER IN THE FIRST DEGREE DATE AND PLACE OF EVENTS: JANUARY 25, 1981, AGUADILLA, P.R. TO BE FILLED AT: SUPERIOR COURT AGUADILLA, P.R. PART
VS.	
RONALD M. CALDER JOHNSON COND. LAGUNA GARDENS, BD. 4, APPO 5-L, Condado Isla Verde San Juan, Puerto Rico	

WARRANT OF ARREST

TO THE CHIEF OF PUERTO RICO STATE POLICE, THE MARSHALL OF THIS COURT:

You are hereby ordered to arrest forthwith RONALD M. CALDER, bringing him without any undue delay before me at AGUADILLA, or before the nearest more accessible magistrate, to answer for the charge(s) mentioned above, and to give him notice that I have set bail at $50,000.00 IN CASH in order for him to remain at provisional liberty, hereof fail not.

AGUADILLA, P.R., MARCH 4, 1981.

ARREST HIM BY DAY OR BY NIGHT.

(S) JOSE L. CAPELLA
Judge (Superior)

[Certificates of Service and of Translation Omitted]

[Exhibit E]

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPERIOR COURT CRIMINAL PART
AGUADILLA, P.R. PART

THE PEOPLE OF PUERTO RICO

VS.

CRIMINAL NO. G81-90
G81-91

RONALD M. CALDER JOHNSON
LAGUNA GARDENS COND., BLDG. 4,
APPO. 5, L-CONDADO ISLA VERDE
SAN JUAN, PUERTO RICO

FOR: ATTACK TO COMMIT
MURDER AND MURDER
IN THE FIRST DEGREE

RESOLUTION

WHEREAS: It appears in this case from the records of the Marshal of this Court and of the Police, filed in this Court, that the defendant has been sought in various places and specifically in that of his known domicile, without being able to locate him for the purpose of:

FOR THE ACT OF ARRAIGNMENT.

WHEREAS: This Court has found itself prevented from continuing the proceedings in this case due to the fault of the defendant who has been evading Justice.

THEREFORE: This Court declares the defendant in the caption hereon, a FUGITIVE FROM JUSTICE, and orders his arrest day or night (without bail) (with bail of $300,000.00) and directs also that the Clerk of this Court issue the corresponding warrants of arrest for this conveyance to the Superintendent of the Puerto Rico Police and all Marshalls of the First Instance Court of Puerto Rico for the purpose of enforcing this order by arresting this defendant and conduct-

ing him to the proper officer under whose custody he shall remain in confinement and at the disposal of this Court until his legal discharge. Any statutory term which might be invoked by the defendant pursuant to any of the provisions of Rule 64 of the Criminal Procedure, is hereby declared inoperative.

GIVEN AT AGUADILLA, P.R., on APRIL 13, 1981.

(S) JOSE L. CAPELLA CAPELLA

Judge

[Certificate of Translation Omitted]

[Exhibit E]

W A R R A N T

TO ALL MEMBERS OF THE PUERTO RICO POLICE and ALL MARSHALLS OF THE COURT OF FIRST INSTANCE:

Pursuant to the Resolution given by this Court, which appears on the face of this Document, I hereby issue this Warrant of Arrest commanding you to effect the arrest, by day or by night, of the said defendant and to deliver him to the proper officer under whose custody shall remain in confinement and at the disposal of this Court until his legal discharge.

Issued under my signature and the official seal of this Court, at AGUADILLA, P.R., today, APRIL 13, 1981.

(S) DANIEL BADILLO BELLO

CLERK

[Certificates of Service and of Translation Omitted]

[Exhibit B]

IN THE SUPERIOR COURT OF PUERTO RICO
AGUADILLA PART

IN THE NAME AND BY THE AUTHORITY OF THE PEOPLE OF PUERTO RICO

UNITED STATES OF AMERICA THE PRESIDENT OF THE U.S.	SS
	CRIMINAL NO.____
THE PEOPLE OF PUERTO RICO	
	FOR: MURDER IN THE FIRST DEGREE
vs.	

RONALD M. CALDER JOHNSON
Laguna Gardens Cond. Bd. 4,
Appo. 5L-Condado Isle Verde,
San Juan, P.R.

The District Attorney, by this information, accuse RONALD M. CALDER JOHNSON, residing at Laguna Gardens Cond., Bldg. 4, APT. 5L Condado, Isle Verde, San Juan, P.R. of the crime of felony, to wit: MURDER IN THE FIRST DEGREE committed as follows:

Defendant RONALD CALDER JOHNSON, on or about the 25th of January of 1981, in Aguadilla, Puerto Rico, which is part of the Superior Court of Puerto Rico, Aguadilla Part, illegally, willfully, criminally, with malice, premeditation and deliberation and with the firm purpose of killing, demonstrating to have a perverted and malign heart, ran over several times with his motor vehicle over Army Villalba, a human being, causing her such serious injuries that moments later caused her death.

These facts are contrary to the law applicable to this case to the peace and dignity of The People of Puerto Rico.

s/ Luis A. Fossé Milan

DISTRICT ATTORNEY

The previous information is based in probable cause determined by a Judge, as provided by Rule No. 23 of the Criminal Procedures Rules, establishing the procedures for Preliminary Hearings and in the conditions mentioned in the back of this information; solemnly believing that just cause does exist to present it in Court.

s/ Luis A. Fosse Milan

DISTRICT ATTORNEY

Sworn and signed before me, this February 27, 1981.

s/ Elidia Salas

COURT SECRETARY

1. AGENT FELIX HERNANDEZ LOT—POLICE STAT. AGUADILLA, P.R. AGT. 9-1350
2. CAROLL CONCEPCION—BO.T. LONAL, BUZON 1620, AGUADA, P.R.
3. ANTONIO DE JESUS GONZALEZ—BASE RAMEY, CIRCULO E-3, Aguadilla, P.R.
4. ROSENDO DECLET OTERO—CALVACHE, BUZON RURAL 1022, RINCON, P.R.

5. LUIS A. BRAVO GONZALEZ—APARTADO 253, SAN ANTONIO, P.R.
6. MYRIAM OLIVERA PAGAN—VILLAS DE RAMEY 84, Aguadilla, P.R.
7. TOMASA WILSON JONES—Calla A 104, Base Ramey, Aguadilla, P.R.
8. PEDRO RODRIGUES BADILLO—Car. 459, Bo. Montana, C/D Gallara, Aguadilla, P.R.
9. EUGINE MILLER—Calla Leman 128, Base Ramey, Aguadilla, P.R.
10. DR. JOSE M. ACOSTA—Patologo, Hospital Sub-Regional, Aguadilla, P.R.
11. AIA TOMAS SANTANA 9—8041— Fotografo, Ctal. Policia, Aguadilla, P.R.
12. ROSA I. MARRERO—Bo. Campo Alegre, Apdo. 116, Aguadilla, P.R.
13. PEDRO DEL VALLE Urb. Medina, Calla F—15, Isabela, P.R.
14. WILFREDO RAMOS SOTO—Bo. Martinica, Apdo. 60, Sant Antonio, P.R. 00752

CONDITION IN WHICH THE JUDGE DETERMINED PROBABLE CAUSE

(X) As per preliminary hearing; after examining under oath all witnesses taken before him.

( ) After hearing the accused waived his rights to a preliminary hearing, by means of a written request made before the hearing.

( ) After having the accused personally waived his rights to a preliminary hearing at any time during the hearing.

( ) After the accused failed to attend the preliminary hearing to which he was properly summoned.

[Certificate of Translation Omitted]

[Exhibit C]

IN THE SUPERIOR COURT OF PUERTO RICO
AGUADILLA PART

IN THE NAME AND BY THE AUTHORITY OF THE PEOPLE OF PUERTO RICO

UNITED STATES OF AMERICA THE PRESIDENT OF THE U.S.	SS
	CRIMINAL NO.
THE PEOPLE OF PUERTO RICO	G-81-90
vs.	FOR: ATTACK TO COMMIT MURDER
RONALD M. CALDER JOHNSON Cond. Laguna Gardens, Bd. 4, Apto. 5L Condado, Isla Verde, San Juan, P.R.	(FELONY)

The District Attorney, by this information, accuse RONALD M. CALDER JOHNSON, residing at COND. LAGUNA GARDENS, Bd. 4, Apto. 5L, Condado, Isla Verde, San Juan, P.R. of the crime of felony, to wit: _____

_____

committed as follows:

Defendant, RONALD CALDER JOHNSON, on or about the 25th of January of 1981, in Aguadilla, Puerto Rico, which is part of the Superior Court of Puerto Rico, Aguadilla Part, illegally, willfully, criminally, with malice, premeditation and deliberation and with the firm purpose of killing, demonstrating to have a perverted and malign heart, attempted to run over with his motor vehicle over ANTONIO DE JESUS GONZALES, a human being, however only hitting him in his right foot, with the intention of causing the death of said ANTONIO DE JESUS GONZALES.

These facts are contrary to the law applicable to this case to the peace and dignity of The People of Puerto Rico.

s/ Luis A. Fosse Milan

DISTRICT ATTORNEY

The previous information is based in probable cause determined by a Judge, as provided by Rule No. 23 of the Criminal Procedures Rules, establishing the procedures for Preliminary Hearings and in the conditions mentioned in the back of this information; solemnly believing that just cause does exist to present it in Court.

s/ Luis A. Fosse Milan

DISTRICT ATTORNEY

Sworn and signed before me, this February 27, 1981.

s/ Elidia Salas

COURT SECRETARY

1. AGENT FELIX HERNANDEZ LOT—POLICE STAT. AGUADILLA, P.R. AGT. 9-1350
2. CAROLL CONCEPCION—BO.T. LONAL, BUZON 1620, AGUADA, P.R.
3. ANTONIO DE JESUS GONZALEZ—BASE RAMEY, CIRCULO E-3, Aguadilla, P.R.
4. ROSENDO DECLET OTERO—CALVACHE, BUZON RURAL 1022, RINCON, P.R.

5. LUIS A. BRAVO GONZALEZ—APARTADO 253, SAN ANTONIO, P.R.
6. MYRIAM OLIVERA PAGAN—VILLAS DE RAMEY 84, Aguadilla, P.R.
7. TOMASA WILSON JONES—Calla A 104, Base Ramey, Aguadilla, P.R.
8. PEDRO RODRIGUES BADILLO—Car. 459, Bo. Montana, C/D Gallara, Aguadilla, P.R.
9. EUGINE MILLER—Calla Leman 128, Base Ramey, Aguadilla, P.R.
10. DR. JOSE M. ACOSTA—Patologo, Hospital Sub-Regional, Aguadilla, P.R.
11. AIA TOMAS SANTANA 9—8041— Fotografo, Ctal. Policia, Aguadilla, P.R.
12. ROSA I. MARRERO—Bo. Campo Alegre, Apdo. 116, Aguadilla, P.R.
13. PEDRO DEL VALLE Urb. Medina, Calla F—15, Isabela, P.R.
14. WILFREDO RAMOS SOTO—Bo. Martinica, Apdo. 60, Sant Antonio, P.R. 00752

CONDITION IN WHICH THE JUDGE DETERMINED PROBABLE CAUSE

(X) As per preliminary hearing; after examining under oath all witnesses taken before him.

( ) After hearing the accused waived his rights to a preliminary hearing, by means of a written request made before the hearing.

( ) After having the accused personally waived his rights to a preliminary hearing at any time during the hearing.

( ) After the accused failed to attend the preliminary hearing to which he was properly summoned.

[Certificate of Translation Omitted]

[Exhibit H]

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
DISTRICT COURT

THE UNITED STATES OF AMERICA)
THE PRESIDENT OF THE U.S.
THE PEOPLE OF PUERTO RICO)

VS.)

RONALD M. CALDER JOHNSON)

SWORN STATEMENT OF WITNESS
ANTONIO DE JESUS GONZALEZ

In Aguadilla, Puerto Rico, on January 26, 1981, I, ANTONIO DE JESUS GONZALEZ, residing in Aguadilla, Puerto Rico, of age, appear before this Court, and spontaneously under oath, testify:

DISTRICT ATTORNEY: Raise your right hand. Do you swear to declare the truth and nothing but the truth about what is asked to you in this investigation?

WITNESS: I do.

D.A.: Your name?

W.: ANTONIO DE JESUS GONZALEZ.

D.A.: Where do you live?

W.: Circle E, 331B, Ramey Base, Aguadilla, Puerto Rico 00604

D.A.: Yesterday, Sunday, 25 of January, 1981, in the evening, your wife los:

her life as a result of an incident, please explain what happened.

W.: In the afternoon we went out for a ride with the kids around the area of San Antonio and the Isabela beach front. Then we returned to the Base and went to the Trino Store to buy some milk and juice. My wife stayed in the car with the kids. I bought the groceries and returned to the car to give them to my wife through the window, she said that the car that was parked alongside had hit our car in the back. Then I checked the car, and told her "there is no damage, let's go home". I noticed that car she referred to was a light blue Mustang. I was starting the engine of my car when two individuals came out of the store to get inside their car (the light blue Mustang). My wife told me that those were the same who had hit our car. The driver of the car was impatient and did not wait for me to back out as I was putting on my seat belt. He suddenly opened his door and hit the right side of my car. I kept calm and proceeded to back out, it was at this time that he said to me "You son of a bitch, puertorican, get out of the way or I'll push you out". Here, I got a little bit angry and get out of the

car to tell him that was no way to talk to a fellow citizen. Then he started screaming again, "You son of a bitch, puertorican, get out of the way or I'll push you out". Then he started his car and started moving his car backwards and forward trying to get my car out of place. At this time I got worried because my family was inside my car. Then I asked him to get out of his so we could talk this over. Then the two individuals got out of the car aggressively coming towards me and insulting me. When I noticed this I told them, "Hold on, get back in the car, I don't want any problems, I'll call the Police", then they started hitting me, my wife got out of the car and was trying to get them off me, another person who had been talking on the phone also came over and tried to help. I was able to get away from them and tried to defend myself with a cane I had in my car. Then the one who been driving got inside his car, I thought he was leaving. I was standing with my wife in back of my car, then he drove his car towards us, first he hit me with his car, and I was thrown to the side. Then he ran over my wife several time, moving his car forward and

backwards. He then backed up and fled. The Police arrived soon thereafter and I told him that the individuals were in front of the Taino Store and then I went to attend my wife. The Police took my wife to the hospital. I was then informed that at the hospital they had tried to save the child my wife was carrying (she was 8 month's pregnant) by putting the baby in an incubator, but the baby died. It was a boy.

DISTRICT ATTORNEY: Do you have anything else regarding this matter?

WITNESS: That this is the same sworn statement I gave before District Attorney JUAN JOSE NOLLA, on January 26, 1981.

(S) _____
DEPONENT

Affidavit No. 146

Sworn and subscribed before me, today May 14th, 1981.

(S) _____
DISTRICT JUDGE

[Exhibit J]

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
DISTRICT COURT

THE UNITED STATES OF AMERICA)
THE PRESIDENT OF THE U.S.
THE PEOPLE OF PUERTO RICO)

VS.)

RONALD M. CALDER JOHNSON)

SWORN STATEMENT OF WITNESS ROSA I. MARRERO

In Aguadilla, Puerto Rico, on January 28, 1981, I, ROSA I. MARRERO, residing in Aguadilla, Puerto Rico, of age, appear before this Court, and spontaneously under oath, testify:

DISTRICT ATTORNEY: Raise your right hand. Do you swear to declare the truth and nothing but the truth about what is asked to you in this investigation?

WITNESS: I do.

D.A.: Your name?

W: ROSA I. MARRERO.

D.A.: Where do you reside?

W: #121, Campo Alegre, Box 116, Victoria Station.

D.A.: On Sunday 25 January of 1981, around 8:00 P.M. or so, some events took place in front of the TAINO Store in Ramey Base, in which MRS. ARMY VILLALBA

lost her life. Please tell what you know about this matter?

W: I was at the TAINO Store buying some groceries. When I was paying the cashier she told me that there was a fight outside in which some northamericans where involved. I heard a small boy saying, "Daddy, daddy". I went outside with Pedro Del Valle who was with me, we stood there watching. There were too americans hitting one puertorican and a lady who was pregnant trying to stop the fight, while the northamericans kept saying, "Let's kill him". Then I don't know if they quit fighting or someone broke the fight, but the puertorrican got up with blood on his forehead and marks of punches he had received, and went to his car and got something out, I could not tell at that time what it was. Then the northamerican said, "Let's go he is getting a gun". He started the car and in reverse got out of his parking spot. Then the puertorrican went neared the car with something in his hand, it was not a gun, then the northamerican drove his car towards the puertorrican and his wife. The puertorrican fell to the side and his wife fell under the car when they were hit by the car. Then

he moved the car forward, and backwards, about three times forward and three times backwards; the woman was stuck under the car, the last time he moved the car backwards the woman was released and a car's tire pass over her. The woman who was in an advanced pregnancy state was completely full on blood and vomit. Then the northamerican fled. There were two of them, one wearing beard and the one who was driving. Then the puertorrican started crying over his wife's body and their son (about 7 years old) who had seen everything, was in shock screaming, "why my mother, why my mother". Inside the car was a little girl about 1½ years old. I asked the cashier of the TAINO Store to call an ambulance. Then the police arrived. The northamerican parked his car a little further away from the site and then returned on foot. All of the witnessed told the police that he had done it. Then another police car arrived and took the woman out of there.

DISTRICT ATTORNEY: Do you have anything else regarding this matter?

WITNESS: That this is the same sworn statement I gave before District Attor-

ney JUAN JOSE NOLLA, on January 28, 1981.

(S) _____

DEPONENT

Affidavit No. 147

Sworn and subscribed before me, today May 14th, 1981.

(S) _____

DISTRICT JUDGE

[Exhibit I]

IN THE DISTRICT COURT OF PUERTO RICO
AGUADILLA, P.R. PART

THE PEOPLE OF PUERTO RICO)	
	AFFIDAVIT IN AID
VS.)	
	OF EXTRADITION
RONALD CALDER JOHNSON)	

SWORN STATEMENT

Comes now ANTONIO DE JESUS GONZALEZ, of age and a resident of Aguadilla, Puerto Rico, who after being duly sworn deposes and states:

That the attached photograph which he has initialed is that of the northamerican who is charged in Puerto Rico with First Degree Murder and Attempted Murder as a result of the incidents which took place in Aguadilla, Puerto Rico on Sunday 25 January, 1981.

And that the name of the person on the photograph is RONALD CALDER JOHNSON, and that RONALD CALDER JOHNSON is accused of causing the death of his wife, ARMY VILLALBA; and that RONALD CALDER JOHNSON is also pending charges of trying cause the deponent's death.

He knows the defendant RONALD CALDER JOHNSON personally as he was an eye witness to the events that caused his wife's death.

IN AGUADILLA, PUERTO RICO, on 14th OF MAY OF 1981.

Sworn and subscribed before me Carlos De J. Rivera, a Municipal Court Judge of Aguadilla, Puerto Rico.

Aff. #148

s/ _____ s/ _____

DEPONENT MUNICIPAL COURT JUDGE

[Photograph omitted]

[Exhibit Q]

Office of the Governor
STATE CAPITOL
DES MOINES, IOWA 30319

ROBERT D. RAY
GOVERNOR

December 28, 1981

The Honorable Carlos Romero-Barcelo
Governor of the Commonwealth of Puerto Rico
LaFortaleza
San Juan, Puerto Rico 00901

Dear Governor Romero-Barcelo:

In re: Extradition of RONALD CALDER (JOHNSON)

Since my letter to you of September 29, and yours to me of October 28, 1981, relative to the above entitled matter, there has been additional communication between and among representatives of our respective governments. It has focused on a change to a more realistic charge against Mr. Calder. These dialogues were mostly initiated by our officials in Iowa.

Earlier this month there was some discussion about Puerto Rico amending its letters of extradition and forwarding them to my office requesting a Governor's warrant on the charge of manslaughter. I believed that would be a significant step which could likely achieve a resolution of this entire matter.

Disappointingly, however, these efforts to secure a definitive response to that possibility from Attorney General Reichard have been met with requests for even more time and delay.

I have to conclude that since this matter has been pending for so long that all of the conversations and communications

amount to an unwillingness to get the criminal charge to something more justifiable.

We have truly made an effort to resolve the differences in this particular case and I regret that it has lingered on for such a long period of time. I think both you and I had hoped we could come to a mutually satisfactory resolution. Now, however, I must tell you that I still have concerns about the charge that was filed against Mr. Calder.

Mr. Brice Oakley will be advising your office of the action I am taking but, nonetheless, I want to formally inform you that on this date I am respectfully denying the request to extradite Ronald Calder (Johnson) from the State of Iowa to the Commonwealth of Puerto Rico.

Best regards.

Sincerely,

s/
Robert D. Ray
Governor

Supreme Court, U.S.
FILED
JUL 24 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-2116

In The
Supreme Court of the United States
October Term, 1985

COMMONWEALTH OF PUERTO RICO,
Petitioner,

v.

TERRY E. BRANSTAD, and the STATE OF IOWA, RONALD CALDER, Intervenor,
Respondents.

On Petition for Certiorari to the United States Court of Appeals for the Eighth Circuit

JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

THOMAS J. MILLER
Attorney General of Iowa
*BRENT R. APPEL
Deputy Attorney General
Hoover Building
State Capitol
Des Moines, Iowa 50309
(515) 281-5166
Attorneys for The Honorable Terry E. Branstad and the State of Iowa, Respondents

WILLIAM L. KUTMUS
620 Fleming Building
Des Moines, Iowa 50309
(515) 288-3339
Attorney for Intervenor Ronald Calder, Respondent

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 228-8845 (tone) 75
or call collect (40[illegible] 342-2831

COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the well-established and uncontroversial rule in *Kentucky v. Dennison,* 65 U.S. (24 How.) 66 (1861), which precludes a federal court from issuing a writ of mandamus to compel a governor of a sovereign state to extradite a citizen to another sovereign state pursuant to Article IV, section 2 of the Constitution, should be overruled at the request of the Commonwealth of Puerto Rico, a territory of the United States.

TABLE OF CONTENTS

	Page
Counterstatement of Question Presented	i
Table of Authorities	iii
Constitutional and Statutory Provisions Involved	1
Statement of the Case	2
Reasons Why the Writ Should Not Be Granted	3
I. The holding of *Kentucky v. Dennison* has been cemented into our constitutional bedrock for 125 years	3
II. The holding of *Kentucky v. Dennison* embraces the sound constitutional policy of respect for sovereign states and their chief executives	6
Conclusion	8

TABLE OF AUTHORITIES

Page

CASES

Brown v. Board of Education, 347 U.S. 483 (1954) 7

Carpenter v. Lord, 88 Or. 128, 171 P.2d 577 (1918) 6

Commonwealth of Puerto Rico v. Branstad, 787 F. 2d 423 (1986) 3

Commonwealth of Puerto Rico v. Iowa, — U.S. — (1984), 52 U.S.L.W. 3509 (Jan. 9, 1984) 3

FERC v. Mississippi, 456 U.S. 742 (1982) 7

Garcia v. San Antonio Metropolitan Transit Authority, — U.S. —, 105 S.Ct. 1005 (1985) 6

In re Wallace, 38 Wash. 67, 227 P.2d 737 (1951) 6

Kentucky v. Dennison, 65 U.S. (24 How.) 66 (1861) 3, 4, 5, 6, 8

Kopel v. Bingham, 211 U.S. 468 (1909) 4

May v. Anderson, 345 U.S. 528 (1953) 7

People v. Millspaw, 257 A.D. 40, 12 N.Y.S. 2d 435, *rev'd on other grounds*, 281 N.Y. 441, 24 N.E.2d 117 (1939) 6

South Dakota v. Brown, 576 P.2d 473 (1978) 6

State v. Coughlin, 90 Wash. 2d 835, 556 P.2d 1145 (1978) 6

Taylor v. Taintor, 83 U.S. (16 Wall.) 366 (1873) 5

TABLE OF AUTHORITIES—Continued

Page

OTHER AUTHORITIES

Abrahamson, *Extradition in America: Of Uniform Acts and Governmental Discretion,* 33 Baylor L.Rev. 793 (1981) 5

Comment, *Interstate Extradition: Should the Asylum State Have Unbridled Discretion,* 1980 Brigham Young Univ. L.Rev. 376 5

Comment, *Interstate Rendition: Executive Practices and the Effects of Discretion,* 66 Yale L.Rev. 97 (1956) 5

Note, *The Extradition Clause: Asylum From the Warrant Requirements of the Fourth Amendment,* 16 Houston L.Rev. 975 (1980) 5

Scoles and Hay, *Conflict of Laws* (1983) 7

No. 85-2116

In The

Supreme Court of the United States

October Term, 1985

COMMONWEALTH OF PUERTO RICO,
Petitioner,

v.

TERRY E. BRANSTAD, and the STATE OF IOWA,
RONALD CALDER, Intervenor,
Respondents.

On Petition for Certiorari to the United States Court of Appeals for the Eighth Circuit

JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Respondents herein offer this joint brief in opposition to the petition for writ of certiorari in the above captioned matter.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 2, Cl. 2 of the Constitution of the United States, the Extradition Clause, provides that:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the execu-

tive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction over the Crime.

The Extradition Clause is implemented by the Extradition Act, 18 U.S.C. Section 3182, which provides that:

> Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, district or Territory to which the person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

STATEMENT OF THE CASE

In this unusual proceeding, the Commonwealth of Puerto Rico seeks to conscript the federal courts in its political battle with two governors of Iowa over the extradition of Ronald Calder, a citizen of Iowa who presently resides in Sioux City. Calder has been charged by Puerto Rican authorities with murder in connection with

an automobile accident which occurred in San Juan on January 21, 1981. Two consecutive Iowa governors declined to extradite Calder to face murder charges.

In 1983, Puerto Rico sought leave to file an original complaint with this Court. The State of Iowa resisted, arguing *inter alia* that because the Commonwealth of Puerto Rico was a territory, it could not invoke this Court's original jurisdiction as a "controversy between two or more states." Article III, section 2. This Court denied leave to file the complaint. *Puerto Rico v. Iowa,* — U.S. — (1984) 52 U.S.L.W. 3509 (Jan. 9, 1984).

Puerto Rico then filed this action in federal district court seeking a writ of mandamus to compel the Governor of Iowa, The Honorable Terry E. Branstad, to extradite Calder. Relying on *Kentucky v. Dennison,* 65 U.S. (24 How.) 66 (1861), the district court dismissed the action. The United States Court of Appeals for the Eighth Circuit affirmed. *Commonwealth of Puerto Rico v. Branstad,* 787 F.2d 423 (8th Cir. 1986). Puerto Rico then filed the instant petition with this Court.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

I. The holding of Kentucky v. Dennison has been cemented into our constitutional bedrock for 125 years.

The holding of *Kentucky v. Dennison,* 65 U.S. (24 How.) 66 (1861) has been a part of our constitutional framework for well over a century. Since the case was

decided, demanding states have launched virtually no litigation in the extradition context in state forums, and other than this case, lower federal courts have not chafed under the restraints of *Kentucky v. Dennison*. The holding simply has been widely embraced as the law of the land by the fifty sovereign states who are vitally concerned with extradition matters. Rarely in the annals of this Court has a decision distributing powers between the governors of sovereign states and the federal judiciary been so thoroughly and comfortably integrated into the body of constitutional jurisprudence.

The Commonwealth of Puerto Rico now seeks to disturb this exceptional tranquility.[1] Puerto Rico claims that the decision in *Kentucky v. Dennison* "cannot be understood apart from the context in which the case was decided: the growing schism between the North and South over slavery." Petition at 18. Puerto Rico apparently sees *Kentucky v. Dennison* as an undigested, unaccepted precedent of this Court to be discarded as an historical oddity.

Puerto Rico's approach is legally and historically inaccurate. *Kentucky v. Dennison* can be, and was, understood apart from the context in which the case was decided. Indeed, this court affirmed the principle *after* the Civil

---

[1]There is substantial doubt whether Puerto Rico may invoke the provisions of Article IV, section 2 of the Constitution, which applies on its face only to extradition requests from *states*. Puerto Rico relies on doubtful dicta in *Kopel v. Bingham*, 211 U.S. 468, 479 (1909), a habeas corpus case, for the proposition that demanding territories are to be treated as states in actions to force rendition of a fugitive. The parties below apparently recognized, however, that the issue need not be reached in light of the all encompassing precedent afforded by *Kentucky v. Dennison*. Because Puerto Rico is not a sovereign state, this case may not be the best vehicle to reconsider *Kentucky v. Dennison*.

War and *after* it was clear beyond doubt that there would never again be persons fleeing prosecution for violation of fugitive slave acts. *Taylor v. Taintor,* 83 U.S. (16 Wall.) 366, 370 (1873).

Recent commentary has also accepted the *Dennison* rule. One observer has noted that "the *Dennison* holding was proper and is supported by the concept that federal courts were not empowered to exercise mandamus to compel the governor of a state to fulfill his mandatory duties". Comment, *Interstate Extradition: Should the Asylum State Have Unbridled Discretion,* 1980 Brigham Young Univ. L.Rev. 376, 392. Another commentator has noted with approval that "the central role which the governor plays in the rendition process is not only firmly established, but constantly accentuated in recent uniform legislation." Comment, *Interstate Rendition: Executive Practices and the Effects of Discretion,* 66 Yale L. Rev. 97, 112 (1956). The writer further concluded that "total abolition of executive discretion" would be "unrealistic and unwise." *Id.* at 115.

There has been no trend to depart from the rule of *Kentucky v. Dennison* in cases arising under state constitutional provisions. *See* Abrahamson, *Extradition in America: Of Uniform Acts and Governmental Discretion,* 33 Baylor L. Rev. 793, 803 (1981); Note, *The Extradition Clause: Asylum From the Warrant Requirements of the Fourth Amendment,* 16 Houston L.Rev. 975, 978 n. 6 (1980). In cases brought under state constitutional provisions, of course, the state supreme courts are free to depart from federal precedents. It is a striking historical fact that in the laboratory of federalism, not one of

the fifty states has departed from *Kentucky v. Dennison* in twelve decades of experimentation. *See e.g. People v. Millspaw,* 257 A.D. 40, 41, 12 N.Y.S. 2d 435, 437, *rev'd on other grounds,* 281 N.Y. 441, 24 N.E.2d 117 (1939); *State v. Coughlin,* 90 Wash. 2d 835, 838, 556 P.2d 1145, 1147 (1978); *In re Wallace,* 38 Wash. 67, 69, 227 P.2d 737, 738 (1951); *Carpenter v. Lord,* 88 Or. 128, 132, 171 P.2d 577, 578 (1918).

In the most recent case, *South Dakota v. Brown,* 576 P.2d 473 (1978), the California Supreme Court refused to issue a writ of mandamus pursuant to a state constitutional provision to compel the Governor of California to extradite a fugitive to South Dakota. The California Supreme Court noted that it "is generally accepted that federal courts lack authority to compel a Governor to deliver a fugitive to the demanding state." 576 P.2d at 476. In interpreting an apparently mandatory provision of the California constitution, the California Supreme Court refused to adopt "a harsh rule" contrary to *Kentucky v. Dennison.* 576 P.2d at 482.

In short, *Kentucky v. Dennison* has been cemented into our legal tradition for over a century. Puerto Rico has not made a persuasive case for using a constitutional jack-hammer to pry it loose.

II. The holding of Kentucky v. Dennison embraces the sound constitutional policy of respect for sovereign states and their chief executives.

Puerto Rico cites numerous cases under the interstate commerce and due process clauses which outline the expanding role of federal courts in our society. *See, e.g., Garcia v. San Antonio Metropolitan Transit Authority,* —

U.S. —, 105 S.Ct. 1005 (1985); *FERC v. Mississippi*, 456 U.S. 742 (1982); *Brown v. Board of Education*, 347 U.S. 483 (1954). These commerce and due process cases, directed primarily at local officials, do not involve orders to governors of sovereign states that in effect direct them to dispatch police officers to arrest citizens for transport abroad for crimes of a questionable character.

The federal judiciary has always treaded lightly in criminal law enforcement matters involving decisions made by governors of sovereign states. Particularly in extradition disputes, the federal judiciary is ill-suited to adopt an aggressive enforcement role.

Extradition cases in the child custody context present an example of some of the domestic interstate difficulties faced by chief executives that are not amenable to federal judicial resolution. Sometimes the courts of two different states come to opposite conclusions on child custody issues. *See* Scoles and Hay, *Conflict of Laws*, § 15.41-46 (1982). *Cf., May v. Anderson*, 345 U.S. 528 (1953). A spouse awarded custody under a lawful order in state A may travel to state B, seize the child, and return home. State B could then charge the spouse with kidnapping because the state courts in state B, contrary to the courts in state A, may have awarded custody to the other spouse who resides in State B. State B might then seek to extradite the seizing spouse. Under Puerto Rico's approach, the governor of state A, if presented with appropriate extradition papers, would have no choice but to extradite the spouse even though he was acting under a lawful custody order from state A.

This Court should stand clear of the nasty political thicket presented in child custody and other sensitive ex-

tradition cases. The resolution of these disputes is best left to the governors of the sovereign states to resolve through the exercise of their executive power.

———o———

CONCLUSION

Kentucky v. Dennison has been cemented into our legal tradition for over a century. Overruling of this established precedent would thrust the Court into nasty political thickets that are best left undisturbed by judicial intervention. For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

*BRENT R. APPEL
Deputy Attorney General
Hoover Building
State Capitol
Des Moines, Iowa 50309
(515) 281-5166
Attorneys for The Honorable Terry E. Branstad and the State of Iowa, Respondents

WILLIAM L. KUTMUS
620 Fleming Building
Des Moines, Iowa 50309
(515) 288-3339
Attorney for Intervenor Ronald Calder, Respondent

*Counsel of Record

(3)

Supreme Court, U.S.
FILED
NOV 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-2116.

In The Supreme Court of the United States

OCTOBER TERM, 1986

COMMONWEALTH OF PUERTO RICO,
Petitioner,

v.

TERRY E. BRANSTAD, AND THE STATE OF IOWA, RONALD CALDER, INTERVENOR,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

JOINT APPENDIX

HECTOR RIVERA CRUZ
Secretary of Justice
Commonwealth of Puerto Rico

RAFAEL ORTIZ CARRION
Solicitor General
Commonwealth of Puerto Rico

LINO J. SALDANA
Counsel of Record
SALDANA, REY, MORAN & ALVARADO
P.O. Box 13954
Santurce, Puerto Rico 00908
(809) 721-6345

SUSAN ESTRICH
TUTTLE & TAYLOR, INC.
Los Angeles, California
KATHLEEN M. SULLIVAN
Cambridge, Massachusetts
Attorneys for Petitioner

THOMAS J. MILLER
Attorney General Iowa

BRENT R. APPEL
Counsel of Record
Deputy Attorney General
Hoover Building
State Capitol
Des Moines, Iowa 50309
(515) 281-5166
Attorneys for Terry E. Branstad and the State of Iowa, Respondents

WILLIAM L. KUTMUS
620 Fleming Building
Des Moines, Iowa 50309
(515) 288-3339
Attorney for Intervenor Ronald Calder, Respondent

Petition for Certiorari Filed June 23, 1986
Certiorari Granted October 6, 1986

603 PJ

JOINT APPENDIX.

TABLE OF CONTENTS.

Chronological List of Relevant Docket Entries 1a

Plaintiff's Complaint, filed February 15, 1984 ..... 2a

Defendants' Motion to Dismiss, filed March 6, 1984 ..... 9a

Motion for Leave to Intervene and Joint Motion to Dismiss, filed by Ronald Calder March 9, 1984 ..... 11a

Order Permitting Intervention, filed August 2, 1984 ..... 13a

Stipulation of Facts, filed in the District Court December 3, 1984 ..... Pet. App. A17*

1. Accusation, dated February 4, 1981 [Exhibit A] 14a
2. Information Charging First Degree Murder, dated February 27, 1981 [Exhibit B] ..... Pet. App. A28
3. Information Charging Attempted Murder, dated February 27, 1981 [Exhibit C] ..... Pet. App. A31
4. Arrest Warrant, dated March 4, 1981 [Exhibit D] ..... Pet. App. A24
5. Fugitive Resolution, dated April 13, 1981 [Exhibit E(1)] ..... Pet. App. A25
6. Arrest Warrant, dated April 13, 1981 [Exhibit E(2)] ..... Pet. App. A27

* Documents denoted in this manner have already been reprinted in the Appendix to the Petition for Certiorari.

7. Fugitive Notification to Sheriff's Office, Polk County, Des Moines, Iowa, dated April 23, 1981 [Exhibit F] 18a

8. Extradition Request by the Governor of Puerto Rico, dated May 15, 1981 [Exhibit G] ..... Pet. App. A22

9. Sworn Statement of Antonio de Jesús González, dated January 26, 1981 [Exhibit H] ..... Pet. App. A34

10. Sworn Statement of Rosa I. Marrero, dated January 28, 1981 [Exhibit I] ..... Pet. App. A38

11. Sworn Statement of Antonio de Jesús González, dated May 14, 1981 [Exhibit J] ..... Pet. App. A42

12. Grant of Extradition Hearing by the Governor of Iowa, dated June 3, 1981 [Exhibit L] 19a

13. Notice of Extradition Hearing, dated June 3, 1981 [Exhibit K] 20a

14. Transcript of Extradition Hearing held June 17, 1981 [Exhibit M] 21a

15. Letter Requesting Transcript of the Extradition Hearing, dated July 23, 1981 [Exhibit N] 54a

16. Letters dated March 9 and 18, 1982, Informing that the Second of Two

Tapes was Destroyed in the Process of Duplication [Exhibits O(1) and O(2)] 55a

17. Letter dated September 22, 1981 on Negotiations for Mr. Ronald Calder's Voluntary Return to Puerto Rico [Exhibit P] 57a

18. Denial of Extradition Request by the Governor of Iowa, dated December 28, 1981 [Exhibit Q] ..... Pet. App. A44

Order of the District Court, entered May 22, 1985 ..... Pet. App. A10

Opinion of the Court of Appeals, filed March 28, 1986 ..... Pet. App. A1

Judgment of the Court of Appeals, entered March 28, 1986 ..... Pet. App. A16

Chronological List of Relevant Docket Entries.

February 15, 1984 — Plaintiff Commonwealth of Puerto Rico's Complaint filed in the U.S. District Court for the Southern District of Iowa, Central Division.

March 6, 1984 — Defendants Terry E. Branstad and the State of Iowa's Motion to Dismiss for failure to state a claim upon which relief may be granted.

March 9, 1984 — Motion for Leave to Intervene and Joint Motion to Dismiss filed on behalf of Ronald Calder.

March 23, 1984 — Order entered permitting intervention by Ronald Calder pursuant to Rule 24 of the FRCP.

Aug. 3, 1984 — Order entered deciding that matter shall be submitted to the District Court on a stipulated record.

Dec. 3, 1984 — Stipulation of Facts with Exhibits A to Q filed.

May 22, 1985 — Order and Judgment of District Court entered, denying the application for a writ of mandamus and dismissing the declaratory judgment claim.

June 24, 1985 — Plaintiff's motion filed for extension of time for filing notice of appeal.

June 26, 1985 — Order entered granting plaintiff's motion for extension to June 27, 1985 to file notice of appeal.

June 27, 1985 — Plaintiff's notice of appeal filed in District Court.

March 28, 1986 — Opinion and judgment of the U.S. Court of Appeals for the Eighth Circuit entered, affirming judgment of the District Court.

In the United States District Court
for the Southern District of Iowa
Central Division

Commonwealth of Puerto Rico, Plaintiff,	)	
	)	Civil Action No.
v.	)	
Terry E. Branstad and the State of Iowa, Defendants.	)	

COMPLAINT

Comes now the Commonwealth of Puerto Rico and by its Secretary of Justice and Special Counsel, does state and allege as follows:

1.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331. This action arises under Article IV, Clause 2 of the Constitution of the United States and 18 U.S.C. § 3182.

2.

The plaintiff, the Commonwealth of Puerto Rico, has sought to extradite a fugitive, one Ronald Calder, from Iowa where he has resided since "jumping bail" in Aguadilla, Puerto Rico in mid-April, 1981.

3.

The defendant, the State of Iowa, has denied and continues to deny the request for the return of Ronald Calder.

4.

On or about January 25, 1981, in Aguadilla, Puerto Rico, Army Villalba, who was then eight months pregnant, was run over by a car driven by Ronald Calder. Both Mrs. Villalba and the baby died on January 25, 1981. According to the sworn statements of eye-witnesses, including the victim's husband, Antonio DeJesus Gonzalez, Calder caused these deaths in a deliberate attempt to run down the couple following an argument with Gonzalez. Witness' testimony demonstrated that Mr. Calder drove his car over the victim more than one time.

5.

Some hours after the incident Ronald Calder was brought before Municipal Judge Jose Moreno and charged with homicide. Bail was set at $5,000.00.

6.

On or about February 4, 1981, after a thorough investigation and in accordance with Puerto Rican Law, the case was submitted by the District Attorney to Judge Benito Diaz-Laureano. After examining the witnesses brought before him, the Court found probable cause to charge Calder with attack to commit murder (Criminal Case G81-90) and first degree murder (Criminal Case G81-90). Bail was set at $10,000.00 and $5,000.00 respectively. Upon deposit of $5,000 cash Mr. Calder was

released. On that same day Calder was summoned for a preliminary hearing but failed to appear. Pursuant to Puerto Rican Law, the Court ruled that by his absence Calder had waived his right to a preliminary hearing.

7.

After setting the arraignment for two occasions on which Calder did not appear and upon the request of the district attorney, Calder's bail was increased to $55,000.

8.

On or about April 13, 1981, Judge Jose Capella Capella declared Calder a fugitive from justice after a search for the suspect proved unsuccessful.

9.

On or about mid-April 1981 Calder returned to his native state of Iowa. On April 16, 1981, the Puerto Rico police notified the Polk County, Iowa Sheriff's Office by cable that Calder was a fugitive and that extradition papers would follow.

10.

On or about April 24, 1981, Calder was arrested by the Des Moines Police Department. He posted the $20,000 bond set by the magistrate.

11.

On or about May 18, 1981, Carlos Romero Barcelo, Governor of Puerto Rico, made a formal demand on then-Governor

Ray of Iowa to deliver Calder to the Puerto Rican authorities. The demand complied in all respects with the requirements of 18 U.S.C. § 3182. Governor Romero Barcelo's warrant and extradition papers contained: 1) a copy of the arrest warrant dated March 4, 1981; 2) fugitive resolution of the Court, dated April 13, 1981; 3) information by the district attorney dated February 27, 1981; 4) two sworn affidavits establishing probable cause; 5) sworn identification of Calder's photograph; 6) verification by Governor Romero Barcelo: that all papers were duly authenticated, that Calder was charged with murder and attempted murder, that a court of Puerto Rico had found probable cause upon a preliminary hearing, and that Calder was then a fugitive from justice.

12.

On or about June 17, 1981, at the request of the fugitive, an extradition hearing was held by Governor Ray's office. The scope of an extradition hearing is limited by statute to whether the extradition request is in the proper form; whether the accused is the person named in the requisition papers; and whether the accused meets the requirements of a fugitive from justice. Neither the form of the papers nor the identity and fugitive status of the accused were disputed by Iowa. Calder himself admitted to being the person sought and to having fled Puerto Rico before arraignment.

13.

At the June 17 hearing, four witnesses testified on behalf of Calder as follows:

1. William Kutmus, counsel for Calder, admitted that his client was a fugitive and was the man sought by Puerto Rico.

2. Mark Pennington, counsel for Calder, testified concerning his impressions in regard to the state of Puerto Rican justice

based on two trips to Puerto Rico in March 1981. Although Mr. Pennington speaks no Spanish, he testified that based on his conversations with the residents of the island, and the media coverage of the event, Calder could not receive a fair trial in Puerto Rico because of anti-American sentiments and because of the judicial system itself.

3. Gene Miller was Calder's companion on the day of the alleged murder. Miller testified to threats of violence to himself and Calder following the incident. He also gave his perceptions about the criminal justice process in Puerto Rico.

4. Ronald Calder testified that he fled Puerto Rico because he feared that he would not receive a fair trial.

Eduardo DeJesus Garcia, special prosecutor for the Puerto Rico Department of Justice, objected at the end of each witnesses' testimony and at the close of Calder's evidence to the form and content of all the evidence presented, as beyond the scope of extradition hearings as provided by the Uniform Criminal Extradition Act, Section 4, codified at III, Iowa Code § 820.20 (1978) and 18 U.S.C. § 3182.

14.

On or about August 10, 1981, Governors Ray and Romero Barcelo met in Atlantic City, New Jersey, to attempt to resolve the matter. Negotiations continued through the fall of 1981.

15.

On or about December 28, 1981, Governor Ray denied the request for extradition of Ronald Calder expressing his concern that the charge was too severe. This despite Governor Romero Barcelo's assurances that plea bargaining would be undertaken as soon as Calder was in Puerto Rican custody and that the charges could be reduced during or after the trial if in fact the evidence failed to substantiate the allegations.

16.

A renewed request for extradition made to newly-elected Governor Branstad immediately after his inauguration was also denied.

First Cause of Action

17.

The plaintiff realleges, as though set forth in full, the allegations contained in Paragraphs 1 through 16.

18.

The failure of the Governor of Iowa to extradite Ronald Calder, upon the proper request of the Governor of Puerto Rico, constitutes a breach of a ministerial duty mandated by Article IV, Section 2 of the United States Constitution and 18 U.S.C. § 3182.

Second Cause of Action

19.

The plaintiff realleges, as though set forth in full, the allegations contained in Paragraphs 1 through 16.

20.

The Governor of Iowa improperly considered extra-Constitutional and extra-statutory matters in denying the request to

extradite Ronald Calder, in violation of the Constitutional and statutory rights of Puerto Rico. The scope of an extradition hearing and the bases upon which extradition must be granted are circumscribed by the Constitution and 18 U.S.C. § 3182. Denial of Puerto Rico's demand, premised as it was on the evidence received at the extradition hearing, violated Puerto Rico's rights under Article VI, Section 2 and 18 U.S.C. § 3182.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays that this Court:

(a) Issue a writ of mandamus directing the Governor to grant the extradition demand made by Puerto Rico and to deliver up to Puerto Rican authorities, Ronald Calder.

(b) Declare and adjudge, pursuant to 18 U.S.C. § 3182, that insofar as an extradition hearing may inquire only as to the identity of the fugitive, his fugitive status, and the formal requirements of the extradition papers, that the ultimate denial of the extradition request based on the June 17 hearing violates Article IV, Section 2 of the United States Constitution and 18 U.S.C. § 3182.

(c) Grant the plaintiff such other further relief as the Court may deem just and proper.

/s/_____

Jerris Leonard
Kathleen Heenan McGuan
Law Office of Jerris Leonard, P.C.
900 17th St., N.W., Suite 1020
Washington, D.C. 20006
(202) 872-1095

Wallace Gonzalez Oliver
Banco de San Juan Tower
654 Munoz Rivera Ave.
Suite 807
San Juan, Puerto Rico 00918
(809) 763-0106

Counsel for Plaintiff

In the United States District Court
for the Southern District of Iowa
Central Division

Commonwealth of Puerto Rico, Plaintiff,	)	
	)	Civil Action No. 84-126-E
vs.	)	
	)	
Terry E. Branstad and the State of Iowa,	)	Motion to Dismiss
Defendants.	)	

COME NOW the defendants, by and through their attorney, and move this Court to dismiss the cause in the above captioned matter for failure to state a claim upon which relief may be granted. In support of said motion, the defendants state:

1. Defendant Terry E. Branstad is Governor of the State of Iowa.

2. The Defendant State of Iowa is a sovereign state of the Union under Article IV, Section 3 of the United States Constitution.

3. The petition seeks a writ of mandamus or other appropriate relief to force Governor Terry E. Branstad to "deliver up" one Ronald Calder pursuant to Article IV, Clause 2 of the United States Constitution and 18 U.S.C. § 3182.

4. Under undisturbed Supreme Court precedent, a federal district court lacks the power to enforce Article IV, Section 3 and any implementing legislation.

WHEREFORE, this action should be dismissed, with costs assessed against the plaintiff.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

/s/ _____
BRENT R. APPEL
Deputy Attorney General
Hoover State Office Building
Des Moines, Iowa 50319
(515) 281-5164

ATTORNEYS FOR DEFENDANTS

Copies to:

Jerris Leonard
Kathleen Heenan McGuan
Law Office of Jerris Leonard, P.C.
900 17th Street, N.W.
Suite 1020
Washington, D.C. 20006

Wallace Gonzalez Oliver
Banco de San Juan Tower
654 Munoz Rivera Avenue
Suite 807
San Juan, Puerto Rico 00918

Charles S. Crook, III
Beving, Swanson & Forrest, P.C.
626 E. Locust Street
Des Moines, Iowa 50309

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Des Moines, Iowa.
on the 4th day of May 1984
/s/Sally Higginbottom

In the United States District Court
for the Southern District of Iowa
Central Division

Commonwealth of Puerto Rico, Plaintiff,	)	
	)	Civil Action No. 84-126-E
vs.	)	
Terry E. Branstad and the State of Iowa,	)	Motion for Leave to Intervene and Joint Motion to Dismiss
Defendants.	)	

COMES NOW, William L. Kutmus on behalf of Ronald Calder and moves to intervene pursuant to Rule 24 of Fed. R. Civ. Pro. 24 and states as follows:

1. On June 17, 1981 an extradition hearing was held requesting the Governor of the State of Iowa to extradite one Ronald Calder to the Commonwealth of Puerto Rico to answer, among other things, a murder charge.

2. The Honorable Robert D. Ray, then Governor of the State of Iowa, refused extradition.

3. A renewed request for extradition was subsequently made to the Honorable Terry E. Branstad, Governor of Iowa, which was also denied.

4. The undersigned attorney represented Mr. Calder with respect to the extradition efforts by the Commonwealth of Puerto Rico.

5. It is the belief that Ronald Calder, applicant through the undersigned attorney, has an interest which is the subject of the above-captioned case and thereby requests the Court leave to intervene.

WHEREFORE, Ronald Calder through his attorney, William L. Kutmus, respectfully requests leave to Intervene in the above-captioned proceeding.

MOTION TO DISMISS

COMES NOW Ronald Calder through his attorney William L. Kutmus (Intervenor) and moves the Court to dismiss the above-captioned case and further states that the said Intervenor joins in the Motion to Dismiss filed by Brent Appel on behalf of Terry E. Branstad and the State of Iowa.

Respectfully submitted.

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U.S. Mail postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on March 6 1984

/s/_____
Janice S. Kirk

KUTMUS AND PENNINGTON, P.C.

By /s/_____
William L. Kutmus
620 Fleming Building
Des Moines, Iowa 50309
(515) 288-339

ORIGINAL FILED

Copies to:

Brent R. Appel
Hoover State Office Bldg.
Des Moines, Iowa 50319

Jerris Leonard
900 17th Street, N.W.
Suite 1020
Washington, D.C. 20006

Wallace G. Oliver
Banco de San Juan Tower
654 Munoz Rivera Avenue
Suite 807
San Juan, Puerto Rico 00918

In the United States District Court
for the Southern District of Iowa
Central Division

Commonwealth of Puerto Rico, Plaintiff,	)	
	)	Civil No. 84-126-E
v.	)	
	)	ORDER
Terry E. Branstad and the State of Iowa, Defendants.	)	

This matter comes before the Court after the filing of the plaintiff's response and the defendants' response to a previous order of this Court. All parties have informed the Court that the matter may be submitted by stipulated record by November 1, 1984. All parties have further agreed that briefs will be filed by December 1, 1984.

For good cause shown,

IT IS THEREFORE HEREBY ORDERED that this matter shall be submitted to the Court on a stipulated record.

IT IS FURTHER HEREBY ORDERED that said record shall be filed by November 1, 1984.

IT IS FURTHER HEREBY ORDERED that briefs shall be filed by December 1, 1984 and that reply briefs to the original filed briefs shall be filed no later than December 12, 1984.

IT IS FURTHER ORDERED that upon the filing of the briefs, this Court will hold a conference call with the parties and a convenient early time for oral argument will then be set.

August 2, 1984.

/s/_____
Donald E. O'Brien, Judge
UNITED STATES DISTRICT COURT

[Exhibit A] (Translation)

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPERIOR COURT
AGUADILLA PART
ACCUSATION

COMPLAINT NO. _____ ACCUSATION NO. _____

DATED _____ ACCUSATION PREPARED AT District Attorney's Office

MADE BY THE PEOPLE OF PUERTO RICO AGAINST

Name	Age	Sex	Soc. Sec. No.	Complete Address	Case No.
1. RONALD M. CALDER JOHNSON	40	M	480-60-7480	Laguna Gardens Cond. Bldg. 4, Apt. 5L-Condado	VP81-11?
2.				Isla Verde, San Juan, PR	
3.					
4.					

For the Crime of FIRST DEGREE MURDER
/ X / Felony /____/ Misdemeanor

Committed at Wing Street, Ramey Base, Aquadilla, PR

on 25 January 1981 at 8:15 pm in the following manner:

The aforementioned accused of this crime, RONALD M. CALDER JOHNSON, on the date and at the time and place shown above, unlawfully, willfully and maliciously, with premeditation and the firm and decided intent of killing unlawfully, showing he had a perverted and malicious heart, on several occasions ran over human being ARMY VILLALBA with a motor vehicle, inflicting serious bodily harm upon her which caused her death moments later.

A DEED CONTRARY TO LAW.

Filed by: /____/ Own Knowledge / X / Through Investigation
/Sgd/ Félix Hernández Pellot

AGT. FELIX HERNANDEZ-PELLOT	AGUADILLA CIC	AGT. #9-1350
Name & Signature of Accuser	Address	Occupation-Position

Sworn to and Subscribed before me in Aguadilla, P.R., on this 4th. day of February, 1981 at 3:55 P.M.

/Sgd/ Benito Díaz Laureano
Name & Signature of Magistrate or Clerk

Names of Witnesses Pathologist, Photographer, (Unreadable)	Age	Complete Address	Examined Under Oath
Caroll Concepción	L	Tabonal Wd.,	Box 1620, Aguada, PR
1. Antonio De Jesus-Gonzalez	L	Ramey Base, Aguadilla	Circle E #331B, X
2. Rosendo Declet-Otero	L	Calvache Wd., Rural Box 1022, Rincón, PR	
3. Luis A. Bravo-Gonzalez	L	Hwy. 459, Box 255, San Antonio, Aguadilla, PR	X
* Myriam Olivera-Pagan	L	Ramey Villas PR	#84, Aguadilla,
4. Felix Hernandez-Pellot #9-1350	L	CIC Aguadilla,	PR
Tomasa Wilson-Jones	L	St. A#104-Aguadilla, PR	Ramey Base,
5. Pedro Rodriguez-Badillo	L	Hwy. 459, Near the Aguadilla, PR	Montaña Wd., Cockfights Ring, X
*(Unreadable) Miller	L		X

1. Information about the defendant:

/__/ Did not appear
/ ✓ / Brought without Arrest Warrant

/__/ Appeared by Summons

/ ✓ / Was accompanied by: Atty. C. Hdez & Atty. J. Colón
/ ✓ / Attorney /__/ Relative /__/ Others
/ ✓ / Legal warnings were made

==========

2. Magistrate's Determination

/__/ There was no probable cause
/ ✓ / The existence of probable cause was determined
/ ✓ / Defendant's arrest was ordered
/__/ Warrant was issued in absentia
/__/ Set free without bail
/ ✓ / Bail was set at $10,000.00 and $4,000.00

2-4-81
Date

/Sgd/ Benito Diáz Laureano
Signature Sup. Ct. Judge

[Exhibit F]

CABLE

April 23, 1981

DET. TURCK
POLK COUNTY P.D.
DES MOINES, IOWA

LA 0770000

REF ONE RONALD M CALDER JOHNSON SUBJECT IS WANTED BY PUERTO RICO AUTHORITIES FOR CHARGES OF FIRST DEGREE MURDER AND ATTEMPTED MURDER WARRANT FOR HIS ARREST ISSUED BY HON SUPERIOR COURT JUDGE JOSE L. CAPELLA, AGUADILLA P.R. ON MARCH 4, 1981 BAIL SET AT $50,000.00 IN CASH.

ADA EDUARDO DE JESUS GARCIA, PHONE 809-725-7082, EXTRADITION UNIT P.R. JUSTICE DEPARTMENT HAS BEEN NOTIFIED AND WILL EXTRADITE. DOCUMENTS WILL FOLLOW BY MAIL.

PLEASE FURNISH US YOUR CORRECT MAILING ADDRESS AND PHONE NUMBER.

/s/_____

AI-IV ARMANDO TAPIA -SUAREZ
COMMANDER EXTRADITION DIVISION
BUREAU CRIMINAL AFFAIRS
PUERTO RICO POLICE DEPARTMENT
809-783-4888

[Exhibit L]

Office of the Governor
STATE CAPITOL
DES MOINES, IOWA

June 3, 1981

The Honorable Carlos Romero Barcelo
Governor of the Commonwealth of Puerto Rico
La Fortaleza
San Juan, Puerto Rico 00901

Dear Governor:

In re: Extradition of RONALD CALDER JOHNSON

Please be advised that William L. Kutmus, Attorney for Mr. Ronald Calder, has requested a hearing in the above matter and Governor Ray has accordingly scheduled an extradition hearing for Wednesday, June 17, 1981, at 2:00 p.m. We are enclosing a copy of the Notice of Hearing.

You will, of course, be represented by Lona Hansen, an Assistant Iowa Attorney General.

In order to give the Iowa Governor's Office a full picture of the facts and circumstances surrounding the offense, we would appreciate your forwarding us any additional facts, reports, statements of witnesses, background information, etc. that do not appear in your requisition papers, but perhaps are contained in your files.

Any assistance you can give us in this regard would be greatly appreciated.

Sincerely,

Jane Mitchell
Extradition Coordinator

Enclosure
cc: Honorable Ralph Skelly Gonzalez, Acting Attorney General
Commonwealth of Puerto Rico
Ms. Lona Hansen, Iowa Attorney General's Office

[Exhibit K]

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

NOTICE OF EXTRADITION HEARING

IN RE: Extradition of RONALD CALDER JOHNSON

WHEREAS, a request from His Excellency, the Governor of the Commonwealth of Puerto Rico, has been received demanding the return of RONALD CALDER JOHNSON on charges of First Degree Murder and Attempted Murder; and

WHEREAS, the Governor of the State of Iowa may grant an extradition hearing to the accused; and

NOW, THEREFORE, I, Robert D. Ray, Governor of the State of Iowa, do hereby grant a hearing to said accused and the hearing will be held in the Office of the Governor, State Capitol, Des Moines, Iowa, on Wednesday, June 17, 1981, at 2:00 O'clock P.M., and I do hereby appoint Brice Oakley as legal counsel to conduct the hearing and to make recommendations to me.

Dated at Des Moines, Iowa, this third day of June, 1981.

/s/_____
Robert D. Ray, Governor

NOTE: Attorney for fugitive must submit a written memorandum to this office no later than Friday, June 12, 1981, setting out the grounds on which they base their claim for executive clemency.

[Exhibit M]

[Transcript of Iowa hearing; all blanks and missing text appear in original]

Calder hearing, Tape I, side 1 page 1.

Brice Oakley:

_____convene this hearing, an extradition hearing. The Commonwealth of Puerto Rico has requisitioned from Governor of the State of Iowa _____ warrant for the extradition of Ronald Calder or Ronald Calder Johnson. Mr. Calder requested and Governor Ray Granted a hearing by his order of June 3, 1981. He appointed me, Brice Oakley as the hearing officer in this matter.

I think there are a couple of points that we ought to make for those of you who may be unfamiliar with the process. First of all, this is the Governor's hearing. It is not a judicial proceeding. It is a proceeding which is uniquely that of the Governor's office in each of the several states. This one is public. It is public because there was no compelling reason for it to be private based upon the record and the file that had been submitted and prepared for the Governor's office. But again, that is true in this case but would not necessarily be true in other cases.

Extradition hearings are governed first of all by the federal constitution, Article IV as well as certain parallel statutes Iowa's chapter 820 and chapter 425 of the Iowa Administrative Code. Requests for hearings can be made by those who refuse to be extradited and they can request that hearing and it is at the discretion of the Governor as to whether that hearing is granted and in this case Governor Ray did determine that it would be in the best interests _____ of the information to be submitted to him in considering the request _____ that there be such a hearing.

I think it should also be pointed out, however, that these hearings are designed to be informal in the sense that the parties _____ to the issues that are permitted by law _____ into. The Governor determines that which he will receive with regard to those issues and therefore there are no technical rules of evidence. There must be some order to which people speak and more matters of courtesy including putting together an adequate record. You should know that there are not objections and counter-objections with regard to admissibility and that sort of thing.

Calder hearing, Tape 1, side 1

page 2

On the other hand, this hearing is not to be a no-holds barred trial of whether or not Mr. Calder is guilty or innocent of the charges which are pending in Puerto Rico. That is not an issue in this matter. While some of the elements necessary to be considered by the Governor in whether or not to grant a warrant of extradition deal, perhaps, with some of those elements, it is not a trial on that basis nor is there any weighing of evidence or substantial degrees of proof and the like which you ordinarily find in a trial.

There are certain procedural matters with regard to how the Governor and I would like to have this conducted.

First of all, so far as examination of witnesses, there will be some testimony _____ I suspect on both sides. It is our idea that it would be appropriate that the statements that may be made on behalf of one if the other party wishes to ask questions of the party who is testifying that it will be up to the party to determine whether or not they wish to answer those questions. That will be true in your case if Mr. Kutmus wanted to ask you questions that will be at your discretion as whether you wish to answer them as well as whether he wants his client _____ to respond to yours. Also it is not necessary to repeat those matters which have been submitted as a matter of affidavit or other matters which were already considered _____ this record. Either you or counsel on the behalf of Mr. Calder _____ submit though I appreciate the necessity of touching on some of those duplication _____.

The hearing is being recorded for my purposes and for the purposes of the Governor in order to insure that all of the comments and the arguments made in support of and in opposition to this request are accurately reflected and key? examples of the record _____ examples are _____ recommendations _____.

Calder hearing, Tape 1, side 1

page 3

As far as our procedure we will follow, we will begin with Miss Lona Hansen who is the assistant attorney general for extradition affairs in the attorney general's office who will first introduce all of you that are participants. Secondly, she will _____ capacity of representing the State of Iowa will confirm or amend her previous communications to the Governor's office _____ that the papers _____ are in order as to form. We have previously received notice that they were but she should review that.

Secondly, Mr. Kutmus is chief counsel on behalf of Mr. Calder. I would appreciate it if you would cover several matters. One if you would confirm or deny whether or not the accused is the same person named in the requisition papers. That is a matter of inquiry.

Secondly, whether or not the accused does or does not meet the requirements of being a fugitive from justice under chapter ____ as to whether that is an issue and finally, any other matters concerning the nature of the issues that can be brought before the governor _____ on this matter.

Understanding that that is rather far-ranging it is my intention that they be permitted to be thorough _____ prepared but again understanding that we are not to determine whether or not your client is guilty or innocent of the charges as filed but only as those issues may pertain to what we have to consider.

After you have concluded, representatives from Puerto Rico will have an opportunity to make such statements and submit any evidence and whatever observations you would like to pursue in rebutting the presentations of counsel for Mr. Calder.

At the conclusion of that both of you should then make closing remarks and if the nature of the issues are such that I feel that it would be useful for both of you to submit written briefs in support of or in opposition to any of the legal issues that are raised, I will indicate at the conclusion whether or not that would be appropriate and you might also determine in your own mind if you wish to do that.

Calder hearing, Tape 1, side 1

page 4

With me is Jane Mitchell who is the Governor's secretary for extradition matters. She will be assisting us in the conduct of this hearing. So, if there are no questions concerning that, I would like you to proceed _____.

Lona Hansen
As Mr. Oakley said, my name is lona Hansen. I am an assistant Attorney General. Accompanying me from the attorney general's office is Richard _____. The gentlemen representing the Commonwealth of Puerto Rico are _____, the district attorney and _____, special prosecutor for the Department of Justice of the Commonwealth of Puerto Rico.

On June 2

(Brice: You'll have to speak up, we can't hear and also, I think we should identify the counsel on behalf of Mr. Calder.
Lona: Mr. William Kutmus, representing Mr. Calder. I do not know your co-counsel, however.
Mr. Kutmus: Mark Pennington.
Lona: Mark Pennington and
Kutmus: He is co-counsel.
Lona: He is co-counsel for Mr. Calder. On May 28, 1981, Jane Mitchell submitted the papers to me that were sent by the commonwealth of Puerto Rico requesting Governor Ray to issue his arrest warrant to allow the arrest of Mr. Calder and transportation back to Puerto Rico. On the second of June, 1981, I sent Jane Mitchell a letter saying I had examined the application for requisition and the papers attached and I found it approved as to form. I have reexamined the papers and I believe they are complying with the requirements of Chapter 820 of the Uniform Criminal Extradition Act as adopted by _____.

Calder hearing, Tape 1, side 1

page 4

Brice: That being the case _____ Mr. Kutmus would you like to proceed. If I may, I think that it would be helpful to all concerned that if at any time there is any difficulty in understanding

page 5

and you wish to have something repeated or clarified — I don't believe we have any language problems, but if in the event that we do please indicate and I am sure counsel and all the parties understand that and that would be just fine. Mr. Kutmus.
Kutmus: Yes, I want to first address to the area or the statements made by the attorney general's representative.
Number one, just for a point of clarification that I am not __ over this. Apparently in Puerto Rico they do include in with the person's name the name of the mothers the name of the mother. In this case it is Johnson so it is Ronald Calder Johnson. We have no quarrel with that. We also have no quarrel with the fact that he is a fugitive. I sent letters to the prosecutor _____ of Puerto Rico indicating that we intend to fight extradition. However, I would like to point out a document that I take issue with and I would quarrel that it is not in order _____ the Iowa statutes regarding extradition. That document that cites? the United States of America, the president of the United States, the people of Puerto Rico v. Ronald Calder Johnson and a? sworn statement by Rosa Marrero. Now I want to make something perfectly clear, Mr. Hearing officer, I am not disputing the contents that were recited in this particular document. It's not a jury trial and we know that in all litigation there are two sides to every story. However, I would like to point out the last paragraph of that document. The district attorney, I don't care who he is, nonetheless the district attorney asks of this witness "Do you have anything else regarding this matter" as hearing officers do. The witness says that this is the same sworn statement that I gave before district attorney Juan (?) Hose

Calder Hearing. Tape 1, side 1

page 5

January 28, 1981 and I want you to — ah — and I want to note for your consideration that that particular document the exhibit that I am referring to is a — has been sworn to and subscribed on May 14, 1981. We have a witness for your consideration who will state that that statement that was sworn to on May 14, 1981 is not the original statement. That that statement has been altered. It is completely diametrically the opposite of what was said previously and I just want to point that out so I would object to

page 6

this as to its form in the sense that it purports to be the same statement _____. So I think that is as far as the Iowa statute Mr. Hearing Officer it is my position that the Commonwealth of Puerto Rico has not complied with the proper documents to be submitted. Obviously, Mr. Hearing Officer, there are issues in this case that ____ on fairness as far as Ron Calder is concerned. I have witnesses that I would like to present to you under oath who will essentially ____ my number one political client in Puerto Rico as it relates to North American, white citizens — the hostilities that exist between the Puerto Rican citizens and _____ American citizens as these hostilities presently between the Puerto Ricans and the North American white citizen. My witnesses I would hope would support the conclusion that if Mr. Calder is sent back to the Commonwealth of Puerto Rico that, number one, his life will be in jeopardy _____ a death warrant, number 2, he will not receive a fair trial whatsoever if he is sent back and number 3, he will be found guilty of murder in the first degree and given a life sentence presumably to die in the penitentiary. These are conclusions that I would like to _____ my co-counsel, Mark Pennington, attorney at law, State of Iowa, an officer of the court who has been present in Puerto Rico on several occasions.

Calder Hearing. Tape 1, side 1

page 6

Unknown voice, possibly Brice: Mark is going to testify? Ok, raise your right hand. Do you solomly swear that the testimony you are about to give is the whole truth and nothing but the truth, so help you, God?
PENNINGTON: Yes, I do.
Kutmus: For the record, will you state your name.
Pennington: Mark Pennington.
Kutmus: And what is your occupation?
Pennington: I am an attorney at law licensed to practice in the state of Iowa.
Kutmus: How long have you been so licensed?
Penington: [*sic*] Six years.

page 8

Aguadelia who was not familiar with the events concerning Ron Calder on January 25, 1981.
Kutmus: What about the city of San Juan?
Pennington: And I might say the same for San Juan which even thought [*sic*] it is on the other side of the island there was no one I talked to that had not heard or read something about the Ron Calder situation.
Kutmus: From your own personal knowledge since there has been news media coverage as well as TV coverage concerning the accident that occurred in January 1981.
Pennington: There has been extensive news media coverage of the event not only at the time of Mr. Calder's initial arrest but also at the time he left the island and came home back in Iowa.
Kutmus: Mr. Pennington, did you have an opportunity to discuss the matters of _____ fairness to Ron Calder with any particular judge? Copieya (?) for example?
Pennington: On March 31, 1981 I did have a conversation with the judge that we were told would handle the case. It was a judge Copeya (?)

Calder Hearing. Tape 1, side 1

page 8

Kutmus: Did he indicate whether or not _____

Did he indicate that he would be willing to grant a change of venue in the event that extradition was granted?
Pennington: Judge Copieya _____ explained that the way that the matter or prejudicial publicity or racial prejudice against Mr. Calder would be handled would be in the proper manner. That he would question, personally, those jurors who were selected to hear the case and ask them whether or not they felt any prejudice toward Mr. Calder and that would be the extent.
Kutmus: Were the attorneys themselves permitted to involve themselves in voir dire?
Pennington: He explained that he would determine whether or not there was any prejudice existing in the jurors' minds toward Mr. Calder.

page 9

Kutmus: Did you also talk _____ prosecutor that at one time was in charge of this case?
Pennington: Yes, I did.
Kutmus: Is he present in the court room?
Pennington: Yes, I spoke with Mr. Romain on March 31, 1981 in his office in Aguadela Puerto Rico in the courthouse.
Kutmus: Was I present?
Pennington: You were present, also, Mr. Kutmus.
Kutmus: Did you touch upon the issue of fairness as far as Ron Calder's trial was concerned? _____
Pennington: Yes. After my first trip and _____ then after some conversation we had with some local people by the time we arrived in Mr. Romain's office we were very concerned about the level of publicity and the possible prejudice against our client. We expressed this to Mr. Romain.

Calder Hearing. Tape 1, side 1

page 9

Kutmus: What was his view?
Pennington: Mr. Romain was quite open and honest with us and Mr. Romain indicated to us based on the publicity this case had received due to the fact it was an American white — white main-land American and also involved a pregnant woman that he did not feel that Mr. Calder would receive a fair trial — not only in Aguadellia but anywhere on the island of Puerto Rico.
Kutmus: Did he also state that this case was probably more celeb _____ case on the island itself?
Pennington: Yes, he did. He did mention that although normally as District Attorney he would be responsible for the prosecution of the case but due to some of the unique political considerations of the case that it had been taken out of his hands and was given to somebody from the ministry of justice. Also that he and the magestrate were the subject of a demonstration by some law students on the island of puerto rico who were condemning both him and the magistrate for allowing the bond to be set so low which resulted in Mr. Calder fleeing the island.

page 10

Kutmus: Mr. Hearing Officer, This is a matter of background now. I would like to say that initially, and this could be a matter of judicial Notice(?) even in a court of law. The accident occurred on January 25, 1981 _____ ultimate the death of the pregnant lady. I won't _____ the facts submitted by both sides. Initially, Mr. Hearing Officer, witnesses were presented before a judge in Aguadellia Puerto Rico. That was the locus where the incident took place. At that time after a consideration of various witnesses the judge determined that at best a prima facie case of involuntary manslaughter by the use of a vehicle would be the proper charge. A bond _____ a bond _____ at that time was _____ at (?) let (?) the committee expected

Calder Hearing. Tape 1, side 1

page 10

Ron Calder to be released set bond in the amount of $5 thousand. This may not be totally accurate but I think he posted about $500 cash bond to represent that $5,000 and he was released. Mr. Pennington has just stated that the prosecutor admitted that — to us — that that original judge was the subject of an investigation _____ here jargon for the North American White _____ was given such a break charge so low in addition the bond of $500 cash so he was under an investigation also as the prosecutor said he was the subject of this kind of thing and so, I guess, I just state this to get the background of what the _____ the exchange of conversations that we had with the prosecutor _____ this is just a point of clarification. So it is my understanding that what you — (interrupted by —)
Brice (?) What you have just said is not inconsistent in any way with the affidavits, is that right?
Kutmus: That is correct.
Brice: OK.

page 11

Kutmus: Now, were there any other statements made by the not only gentleman prosecutor Romain that is present today and other members of his staff — were there any other statements made concerning Calder's safety?
Pennington: Mr. Romain indicated that the reason the bond was so low so that he was _____ was low, because he was of the opinion that should Mr. Calder been incarcerated on that evening that he would have been killed.
Kutmus: Do you have any newspaper clippings to the extent that at least _____ Star a Puerto Rican newspaper that is written in English, such a communication was made to the San Juan Star.
Pennington: I have a February 6, 1981, edition of the San Juan Star — it does not identify the district attorney whether he states that an _____ district attorney told United Press International that Calder was freed on bail for his own protec-

Calder Hearing. Tape 1, side 1

page 11

tion under fear that he might be killed in the _____ District Jail because of the circumstances of the case.
Kutmus: And those circumstances that Mr. Romain is indicating to you are prejudicial — go ahead
Pennington: The circumstances of the case being the fact that it was a government employee of the United States that was involved in the accident that took the life of a pregnant woman.
Kutmus: Are there any comments about the small _____ that broke through the Puerto Ricans that expressly want it to become in effect of the United States.
Pennington: Mr. Kutmus are you referring now to the article?
Kutmus: No, I am asking about the driver.
Pennington: Based on conversations with other people on the isle of Puerto Rico there just does, although a very small minority; that do desire independence from the United States — and that they picked on this case as an example of the constant justice that Puerto Ricans receive — based on my conversations with some other individuals in Puerto Rico it is felt that certain inapendestos have

page 12

holds on this case that, for example, while American receives special treatment and also the media made known the fact that he was allowed to leave the island with permission of the FAA after they learned that he was in fact _____.
Kutmus Did the local prosecutor state to you whether or not he in fact wears a bullet proof vest or anything of that nature.
Pennington: Yes he stated that he did.
Kutmus: Did he say for what reason — or did you make any estimates as a result of _____
Pennington: I certainly was concerned about the stability of that District having been a prosecutor myself, I know of no one who has ever ever worn a bullet proof vest. The reason

Calder Hearing. Tape 1, side 1

page 12

it came out was on the day we arrived in San Juan National Airport there was an attempted assassination of President Reagan. Naturally, the very next morning in our meeting with Mr. Romain we discussed that assassination attempt, naturally both of us _____ and he mentioned that he didn't understand why the President wore bullet proof vests.
Kutmus: So what you made from this is that things were pretty hot after _____
Pennington: Well it was not based solely on that comment but that coupled with what had been told me why Walter Kooker who is the senior FAA official on the island of Puerto Rico — certainly represented more of a stronghold for the _____ than other areas beyond and individuals expressed concern that any low caliber trial — Calder would without a deal would certainly get a _____.
Kutmus: Did the office of the _____ Puerto Rican justice as it relates to Americans or North Americans employees of the Federal Government — whether there is _____.
Pennington: Calder expressed his opinion that Ron Calder or any other employee of the federal government in Puerto Rico in his opinion could not receive a fair trial, not even in San Juan.

page 13

Kutmus: So Mr. Pennington as co-counsel and admittedly have you reached any conclusions as to your separate visits to Puerto Rico about the fairness or non-fairness of trials in Puerto Rico.
Pennington: Yes, I have, based on my conversations both in San Juan and the _____ area. I never talked to anybody that had not heard about this case and everyone who I had talked to certainly had expressed their opinion that Ron Calder should be tried in Puerto Rico could not receive a fair trial. The fact that he is a white American man _____ the island of Puerto Rico. And that is my opinion that he could not receive a fair trial in the Commonwealth of Puerto Rico.

Calder Hearing. Tape 1, side 1

page 13

Kutmus: Do you know whether or not that our office under my signature submitted on April 8, 1981, a letter to Romain stating that it was our opinion that Mr. Calder could not receive a fair trial in Puerto Rico and his life was in jeopardy in Puerto Rico and that we would resist any extradition efforts made on behalf of Calder. Pennington: After returned to the mainland and got some counsel with our client we did notify Mr. Romain our attention as to why our intention to resist extradition back to the isle of Puerto Rico.
Kutmus: And also in that letter did we conclude by saying as an officer of the court I can assure you that upon receipt of the proper documents submitted to the proper authorities will begin the extradition process.
Pennington: That is what we said and in fact what did occur.
Kutmus: I would like to introduce this letter into evidence for the Governor's consideration. That the courts be received — do you have a copy of that letter.
Brice? Oh, let me ask a couple of questions first, if I may. I would like a copy of the San Juan Star Article but we can have one made — do you also want to get a copy of that letter — I assume you all have access to copy machine. O.K. we'll see that you have a copy of it. I would like to know when you visited with people in Puerto Rico, did you talk to Puerto Ricans or did you talk to Americans — what was the nature of the people who said _____ San Juan.

page 14

Pennington: I did speak with some Americans who were employed in the isle of Puerto Rico. I did speak to several Puerto Rican residents. I did not identify myself as to why I was asking or did not identify myself, Mr. Counselor, to Mr. Calder. Naturally, I was limited in that I could not speak Spanish so could only talk to those who were bilingual. I did speak to employees, people who were working wherever I may be at,

Calder Hearing Tape 1, Side 1

page 14

anybody that I would run across, I would ask them if they had heard about the accident — what did they think. Court House employees, people who worked in the clerk's office what had they heard about it — how did they feel about it. They feel that this guy was going to get a fair chance there would be a trial in Armedea.
Brice: Gentlemen, do you wish to ask any questions at this time you can reserve that if you wish to and you wish to submit to any examination from representatives from Puerto Rico. Do you wish to ask questions now or do you want to wait until further opportunity?

Don't see the point in asking Mr. Pennington any questions.

Brice: Thank you, you may proceed Mr. Kutmus.
Kutmus: My next witness is directly behind me, Gene Miller is his name — could we push the chair to the Counselor's table and have him sit — of course. Oh, let me stand and you sit in my chair.

For the records, will you state your name.
Miller: Gene Miller
Kutmus: I want you to speak loud and clear before _____ Puerto Rico as well as the press.
?____ As due reminder that I do have his affadavit and as do accounts of Puerto Rico so in the interests of _____ we need to duplicate those materials that are in that — that relate to matters that are included.
Kutmus: Again, your name.
Miller: Gene Miller
Kutmus: Alright, good. How old are you Mr. Miller?

page 15

Miller: Thirty seven
Kutmus: Are you married?
Miller: Married

Calder Hearing Tape 1, Side 1

page 15

Kutmus: How many kids?
Miller:
Kutmus: Where do you reside today?
Miller: I'd rather not say
Kutmus: What state are you from?
Miller: Florida
Kutmus: Now Mr. Miller are you acquainted with Mr. Ron Calder
Miller: Yes I am
Kutmus: When did you first make his acquaintance?
Miller: My wife was also air traffic controller and we were working in San Juan.
Kutmus: Is that San Juan, Puerto Rico?
Miller: Yes sir
Kutmus: What is your occupation?
Miller: _____
Kutmus: In _____ were you a
Miller: Yes, I was Director of operations for a small commuter airlines in San Juan — Southern National
Kutmus: O.K. you are an airline pilot for a commuter airlines at least in January?
Miller: Correct
Kutmus: Are you now living or employed with any commuter airlines in Porto Rico?
Miller: No, I am not
Kutmus: Now Mr. Miller lets direct your attention to January 25 or about January 25, 1981 and let me ask you whether or not you were with Ron Calder about 8 o'clock.
Miller: Yes, I was with Ron
Kutmus: What was the purpose of being together.
Miller: Since we originally lived in San Juan and my wife was transferred to the _____ airport on the west end of the island

Calder Hearing Tape 1, Side 1

page 16

which is about 20 miles from _____ since she was with friends they drove up on a different day _____
Kutmus: Your wife is a _____, O.K. then what happened?
Miller: Before we started we decided to go down to the _____ to get a couple of packs of cigarettes so we wouldn't have to miss any of the game.
Kutmus: O.K. now that's a carry-out place at the grocery store?
Miller: Yes, it's about a quarter of a mile from where we
Kutmus: And who was driving at that time?
Miller: Ron was.
Kutmus: And were you a passenger?
Miller: Yes I was
Kutmus: And you have submitted an affadavit outlining the facts that you saw on that day, have you not.
Miller: Yes I have
Kutmus: I'll touch on it a little bit if I can, Mr. Oakley. There was a pedestrian that was struck by a vehicle driven by Ron Calder.
Miller: Yes there was. My personal opinion of the whole thing — it has been blown up out of proportions — the witnesses testified _____
Kutmus: Now let me ask you. After the accident had occurred, did you and Mr. Calder together with the police force and all of the _____ go before a magistrate or a judge.
Miller: Yes we did. That very night they took us before a judge.
Kutmus: Now I want you tell — be very thorough about this. I want you to tell the circumstances surrounding your testimony as well as the other person's testimony before the district attorney or assistant attorney and the judge.
Miller: O.K. Number 1 There were approximately 4 witnesses including myself. Number 1, I was the only witness that was actually sworn in.
Kutmus: The other witnesses were not sworn in?
Miller: No they were not.
Kutmus: Was there a _____ in the _____ courthouse?

Calder Hearing Tape 1, Side 1

page 17

Miller: _____ They told us to stay away from all doors and windows because of situations that people were getting wild outside but at the court itself in Acquidilla they had armed guards at doors because they were fearful _____
Kutmus: Now the two prosecutors from Puerto Rico — were any of those prosecutors present that first meeting?
Miller: _____
Kutmus: Now did Mr. Calder at that time have an attorney?
Miller: Carlos Fernandez
Kutmus: Did he speak English and Spanish
Miller: Fluent English and Spanish
Kutmus: Now did you testify under oath?
Miller: I testified under oath in English.
Kutmus: And what was the substance of your testimony?
Miller:
Kutmus: How long did it take for you to recite your version of that
Miller: Approximately 5-10 minutes.
Kutmus: At that time were you a witness that was asked to testify on behalf of the _____
Miller: Yes I was there as a witness
Kutmus: Did the other individuals testify also.
Miller: Yes they did — they testified speaking Spanish and
Kutmus: Was it translated to you by Carlos
Miller: After it was over
Kutmus: And what were you told the substance of the testimony of the other three witnesses was?
Miller: After the hearing I asked Carlos and he said basically the same as I had testified at the time.
Kutmus: Basically the same as you had testified.
Miller: The people that testified right after it happened told the same story
Kutmus: And that story —
Brice: I do want to interrupt — I didn't swear in Mr. Miller and I am going to do that at this point. Mr. Miller I am going ask both

Calder Hearing Tape 1, Side 1

page 18

as to your testimony that you have given here previously and the testimony that you are about to give — will you raise your right hand. Do you solemnly swear that the testimony you have given and that which you will hereafter give is and will be the truth and nothing but the truth, so help you God?
Miller: Yes, I do.
Oakley: Thank you, Please be seated.
_____ Mr. Oakley, if we may be permitted we would like to express an objection for the record of this proceeding.

Your objection may be reserved and your timeliness of it will not be an issue in this matter so if you want to make those objections as far as proceeding further on it or whether this is applicable to the issues, you can do that at the conclusion of this case. It will be no prejudice to you, because I am going to permit them to go ahead and present this testimony.
Kutmus: At the beginning of this proceeding wherein I objected to a particular document submitted to the Governor — a sworn statement a statement dated May 14, 1981 but it _____ to a statement she had made at an earlier date. You have had an opportunity to review that statement, have you not?
Miller: Yes, I have.
Kutmus: Is there a difference between statement of May 1981 and the statement that you understood at the time that the witness testified before a judge and also an attorney.
Miller: No. Number 1 the testimony given was not as it all happened, number 2 everybody was speaking in Spanish so the only thing I had to go on was what Carlos told me, he said that he agreed basically on what was said, but later on
Kutmus: All right now, what did the — what did the original judge — what did he identify as a charge against Mr. Calder.
Miller: At the Police station, before we went to the courthouse that night the District Attorney said he was going to _____

Calder Hearing Tape 1, Side 1

page 19

After he got up in front of the judge, I testified the rest of the witnesses testified and the judge says no _____ feel it was murder, it was more like _____
Kutmus: Was that the charge against Ron Calder?
Miller: That was the charge
Kutmus: Were you charged with any offense at that time.
Miller: No, I was not.
Kutmus: Were you subsequently asked to go to _____ at another hearing?
Miller: At the second hearing
Kutmus: And approximately, what date was that? Was it several days or a week or two weeks later?
Miller: Roughly two weeks later.
Kutmus: Now you went to the courthouse again
Miller: Yes we did.
Kutmus: Did anything unusual happen the second time? First of all what was the atmosphere like?
Miller: Again, there were armed guards — they had two off-duty policemen meet us outside of town to escort Ron in because they were afraid of something might happen. We got to the courthouse before we could even get out of the elevators — the police stepped out into the hallways to check the hallways and to make sure there was no one around with weapons. After we got into the hearing itself, Lo, and behold I was surprised that I was being charged on aggravated assault.
Kutmus: And who informed you that you were now being charged?
Miller: Carlos told me that he found out — I guess the District Attorney told him.
Kutmus: And were you then told that this was an effort on the part of _____ Puerto Rico to discredit your honest testimony?
Miller: Well, I couldn't figure out why I was being charged and as Carlos said — Why am I being charged — I am the one that originally got hit? And he said _____ the attorney's

Calder Hearing Tape 1, Side 1

page 20

part to discredit my testimony.

Tape 1, Side 2

They said that if I — whatever I said at that point — it could be held against me and I had the option to either testify or not testify. I testified anyway — the only thing I had to do was to tell the truth, which I did.
Kutmus: And were you then arrested or at least processed and then
Miller: They — I signed some papers — everything was in Spanish something to do with the charges
Kutmus: Was there a _____ place or were you allowed to go out on your own cognizance.
Miller: _____
Brice: You were under bond?
Miller: No
Brice: You were not
Miller: Nope
Kutmus: Subsequent to that, did Mr. Calder, was he then charged with first degree murder.
Miller: Then the _____ charge with first degree murder and they also upped his bond.
Kutmus: I think the record shows that the bond was _____
Brice: It shows $300,000
Kutmus: It was lower than that
Brice: $50,000
Kutmus: At that time — now did you seek counsel at that time?
Miller: The only counsel we had was Carlos —
Kutmus: He is a Puerto Rican lawyer — is he not? Did he give you any advice about the wrong charge?
Miller: He really wouldn't comment one way or the other except that there was a ploy in the D.A.'s side to discredit myself.

Calder Hearing Tape 1, Side 2

page 21

Kutmus: Did he say why don't you stick around and fight it?
Miller: No he suggested that we leave the island.
Kutmus: Why?
Miller: There were numerous threatening phone calls to the control tower where my wife worked beings she was also a government employee
Kutmus: Were there any remarks for trading a wife for a wife?
Miller: Right after the accident, I drove _____ car through the crowd to the police station to get it off the street, several people were shouting "gringos will not leave the island alive" Various rumors around the airport — it is a law impressed on them that if the law will take care of it it could be _____. My wife was a sting of nerves — she could not work — we finally agreed that she should quit the FAA and leave the island — would be a better person — would be a better life to keep alive than to be dealing with such an atmosphere.
Kutmus: Now at the second hearing did you have a Spanish speaking Puerto Rican interpreter.
Miller: They did not furnish us an interpreter — it was a gentleman who worked for the FAA who was Puerto Rican who came with us from San Juan to interpret the proceedings at the hearing.
Kutmus: And what were his comments.
Miller: It was his comments also that changed my mind about staying on the island. As we were leaving, he said "I am totally ashamed to call myself a Puerto Rican after the proceedings that you have seen in the courtroom."
Kutmus: This is what he told you?
Miller: That is what he told us. He said this in front of myself Ron Calder, _____ and Carlos.
Kutmus: Did anyone reveal to you that _____ custom can be purchased?
Miller: There are so many things that came up — several people said "well if you want a witness, all you have to do is buy one." I warned Carlos before he dropped us off that night — he says you know it might be cheaper if you spent $500 _____

Calder Hearing Tape 1, Side 2

page 22

Kutmus: An approximately, when did you leave the island of Puerto Rico?
Miller: It was roughly four days after the second hearing. My wife had already left, my wife and son to get back to the States to my brother's house.
Kutmus: Did you also mention to Mr. Calder that you were leaving the island.
Miller: Yes I did.
Kutmus: And what _____
Miller: Well the reason I left was to take care of some problems at home — my son in a different school and I think it was agreed by everybody that we were fighting a lost cause here — why stick around.
Kutmus: Now Mr. Miller, may I ask you this question now. Your statement that you submitted as a sworn statement to Mr. Oakley for the Governor's consideration. Virtually acquits or exonerates Mr. Calder from any current liability — do you understand that — I am not quite into the facts. If the Governor of the State of Iowa should honor the request of the —
Puerto Rico to extradite Ron Calder back to Acquidilla, would you be willing to go back to that island and testify in behalf of Ron Calder?
Miller: Knowing what I know now, I don't think I would.
Kutmus: Why wouldn't you? Were you given any advise by anyone?
Miller: He sought counsel when we got back to the States
Kutmus: Who is we?
Miller: Mr. Hall — an attorney — and he seemed to be familiar with the Puerto Rican system — deals with _____ do not go back in certain cases.
Kutmus: Did he give you any further explanation.
Miller: He said you won't get a fair trial — They're liable to involve you
Voice murder charge against you
Miller: Murder charge — it seemed sort of strange before we left also they were going to have a third hearing or so the rumor has it

Calder Hearing Tape 1, Side 2

page 23

and try to _____ me and to avail myself and I told the ____ this and he said just forget about _____

Kutmus: Mr. Miller would you fear for your life if you returned to the island of Puerto Rico?

Miller: I would fear for my life in matter of fact I fear for my family's life when they find out where we live now.

Kutmus: What about Mr. Calder?

Miller: I wouldn't think that he would have a chance, any kind of a chance if he returned. After what I have seen down there I was thinking that if the system had been in the States — but more trust in the system — it would be wiped out. There is no way that _____

Kutmus: Is there possibly

Miller: We were over there on the 14, 15, 16 months

Kutmus: Is there a local dispute or an ethnic practice that eminates from the Puerto Ricans against North Americans — whites?

Miller: I feel that _____ disloyal — We originally moved there to live there permanently — _____

Kutmus: There is hostility that exists between two nationalities?

Miller: I would say so

Kutmus: Was it made known in this particular case?

Miller: I would say yes.

Kutmus: You have had some communication with the _____ as of this date are you aware of continuing pre-trial publicity about the Calder incident in January.

Miller: We have two or three people that we talk to and they say yes, there is still the same turmoil over there and why they are pushing so badly I really don't know. I testified the same at both hearings it seemed that nobody would listen to what we had to say. They listened to whatever they wanted to hear and it made no difference whether you were under oath or not.

Calder Hearing Tape 1, Side 2

page 24

Brice: Mr. Miller or Mr. Kutmus would it be your understanding that Mr. Miller is charged with an offense that would also be subject to extradition?
Voice: It is not very clear at this point but it is my understanding that he is not charged with felony — I have been told that there is _____ the same rumors that I heard about Bobbie Knight
Brice: When you were extradition act, was it not?
Miller: Right.
Brice: Do you gentlemen have any questions
Voice: I want to express my objection again — it is part of the testimony that I think would be completely useless _____ attempt to cross-examine this witness. And then just for your information he is charged with — charged with aggravated assault based on the _____ witnesses who testified that two men hit him once — it was a misdemeanor punishable by a fine not to exceed $500 or imprisoned not to exceed 6 months. And Puerto Rico never extradites for dismeanors.
Voice: Are there any other questions?

I would like to call the defendant, respondent, fugitive or whatever he is, Ron Calder. Mr. Oakley will swear you in.
Brice: Raise your right hand. The testimony you are about to give will be the whole truth and nothing but the truth, so help you God.
Calder: I do.
Kutmus: You will have to speak Mr. Calder. For the record, state your name.
Calder: Ronald Morris Calder
Kutmus: What is your age?
Calder: 41
Kutmus: Are you married?
Calder: Yes

Calder Hearing Tape 1, Side 2

page 25

Kutmus: And do you have children?
Calder: Yes
Kutmus: How many children
Calder: two
Kutmus: you are presently living in Des Moines, Iowa?
Calder: That is right
Kutmus: What is your occupation? Presently.
Calder: Air traffic controller.
Kutmus: Are you one of those persons that assists airplanes in take-off and landing and that sort of thing.
Calder: yes
Kutmus: And where do you work
Calder: I work at the Des Moines Municipal Airport
Kutmus: Are you a government or U.S. government employee?
Calder: Yes I am
Kutmus: And who is your Agency?
Calder: Federal Aviation Administration
Kutmus: And what is your GS rating?
Calder: I'm GS 12
Kutmus: Would that be considered an officer type if that were translated
Calder: I believe the same as a major _____ I'm not sure.
Kutmus: How long have you worked for the federal government?
Calder: Almost 15 years.
Kutmus: You have never been in trouble before
Calder: No I haven't
Kutmus: Have you ever been in the armed forces?
Calder: Yes I have
Kutmus: What branch
Calder: Army
Kutmus: What was your discharge
Calder: Honorable
Kutmus: And when were you honorably discharged?
Calder: 1965

Calder Hearing Tape 1, Side 2

page 26

Kutmus: What is your education?
Calder: High school and semester in college.
Kutmus: Are you a local or native Iowan?
Calder: Yes I am
Kutmus: And where were you born?
Calder: Jefferson, Iowa
Kutmus: Do your parents live here in Iowa
Calder: Yes they do
Kutmus: Directing your attention to 1980 - 1981 - did you execute a contract with the FAA being an air traffic control employee in San Juan, Puerto Rico.
Calder: Yes — I was in San Juan in 1979
Kutmus: In 1979 your job description was what?
Calder: Air Traffic Controller
Kutmus: Where was Tower
Calder: in San Juan, Puerto Rico
Kutmus: You were present, were you not when Mr. Miller had testified is that correct?
Calder: Yes
Kutmus: Save of extradition — would you totally agree with the answers to the questions that I _____ to Mr. Miller — would your answers be substantially the same.
Calder: Yes they would
Kutmus: You have given a sworn statement, have you not — submitted it to the hearing officer, Mr. Oakley, for the Governor's consideration outlying the facts that occurred in January — Were you in fear of your life after the incident when you were taken to the police station?
Calder: Yes
Kutmus: Was there an
Calder:

. . . . . .

Calder Hearing Tape 1, Side 2

page 28

by the name of Phillip Martin but that is not his correct name. I would just like to refer to that — take it for what it is worth if I can. The rules of evidence are lax, I understand, — has there been a person with a suit named Phillip Martin — has he communicated with you periodically about your case.
Calder: Yes, he has had several contacts with me
Kutmus: Are you aware of the letters that he sent to me and the long distance phone calls to me?
Calder: Yes I am
Kutmus: Now why don't you tell Mr. Oakley about some of the conversations, some of the written words about buying, paying off the witnesses and particularly the testimony that was to be used for this extradition, as you understood.
Calder: In this letter that I saw, stated that they knew that I was not guilty of the charges and they were concerned _____ finally after contact with him they found out that the situation was — one of the witnesses supposedly has stated that he __ by the Puerto Rican Constitution.
Kutmus: You are not _____ it is Mr. _____
Calder: I don't know who or why, but he said that he supposedly had been pressured to testify as he has testified and for proper sums of money he would be willing to change that testimony

> And that is the communication that I received also.
> Yes sir.
> Is that fairly consistent with your understanding of Puerto Rican justice

as it relates to you.
Calder: Any time that I was in Puerto Rico, which was about 20 months I heard numerous occasions where supposedly witnesses had been bought or had been paid supposedly — I don't know if this is true — it may just be hearsay but people have told me of this of who I have respect and I assume they know what they are talking about.

Calder Hearing Tape 1, Side 2

page 29

Kutmus: Now you left the island of Puerto Rico, did you not.
Calder: Yes, I did
Kutmus: And you failed to comply with apparently a court order to appear in the court of justice
Calder: Yes, I did
Kutmus: Why
Calder: That was a hard decision — whether to leave or whether to stay. I knew if I left after the second hearing there really didn't look like there was a chance to get a fair trial

Kutmus: What about the fact that Mr. Miller went out
Calder: I talked to him and more or less _____
I was afraid if I went through the trial the way things had been — the way they had done things previously, let me refer back to the second hearing — I was called on an afternoon, I think it was Wednesday afternoon or Tuesday afternoon I don't remember the day now, but I was told at that time to be there the next day at 3:00 and I said what should I do and my lawyer told me 5 to 8 thousand dollars —
Voice: That is short notice — I can agree with you.
Calder: I was afraid that the next one if they raised the bond so high — then I would have to go to jail.
Voice: What would happen to you in jail
Calder: Well I don't know _____
Voice: In other words you feel that you would be killed.
Calder: Yes, I am afraid I would
Kutmus: Were you also aware that Mr. Miller said that he would not come back for fear of his own safety.
Calder: Yes
Kutmus: _____
Calder: They had to have something I didn't have any one to testify on my side of the case.

Calder Hearing Tape 1, Side 2

page 30

Brice: How were you able to leave Puerto Rico — that is did you leave under your name of Ron Calder
Calder: Yes — I bought a plane ticket
Brice: You bought a plane ticket and left
Calder Yes and I was not too sure that I would be able to do because _____ the reasoning behind this was that I had been told by people that there was a watchout for my name and if there was a ticket purchased in my name that they were to be notified and I would be arrested on the spot.
Brice: Do you gentlemen have any questions that you wish to ask?

_____ will attempt to make them useless and all this testimony will be self serving based on hearsay — based on

Voice to Speaker: I can't hear you, I'm sorry
Speaker: We feel that this type of testimony is forbidded from extradition hearings and we can cite you a quotation
Brice: We will have an opportunity at your closing statement from when your rebuttal to make as complete a statement as you wish, apparently you elect not to examine Mr. Calder, and I have no further questions — Do you have any one further.
Answer: No thank you.

Gentlemen, the floor is yours for whatever statement you would like to make in this regard.
Brice: Incidentally, Mr. Jesus what is your precise function with the Department of Justice — I guess I didn't get that.
Jesus: Sir, I'm a with the Department of Justice and the only reason I am here is because Ms. Lona Hansen did call us and strongly suggested that we be present, so we were not thinking we would be _____ to this case — we were thinking that we would only be asked questions _____
Brice: Do you have any statement then that you would like to make?

Calder Hearing Tape 1, Side 2

page 31

Jesus: Well I would like to — for you to give Mr. Luis Roman who is the District Attorney for Alemeda County — remarks that are personal against this person — saying things that are completely false and we would like to personally express his view in this matter.
Brice? Do you solemly swear to tell the truth, the whole truth and nothing but the truth and your testimony be given in these proceedings so help you God.
Roman: I do
Jesus: Please state your name for the record
Roman: Luis A. Roman
Jesus: What is your occupation
Roman:
Jesus: So you are the head District Attorney for Aguadilla County is that correct — would you spell Aguadilla
Brice: How do you spell his last name?
Jesus: His name? Roman
Jesus: _____ Would you care to comment on this Affidavit
Roman: I would like to say that I don't understand English very well — I don't speak English very well either. Some things that don't sound correctly — please
Brice: I have no objection to that
Roman: I really get surprised when I hear _____ testimony because it changed our conversation His name was Mr. after about a 20 minute conversation especially with Mr. Kutmus was present at that time Mr. Kutmus asked me a few questions. He asked me about .
He asked me about the possibility of ____ I told him that we have
He asked me too about if we got authority — I explained that we have our own system and I tried to explain the difference between both systems. We talked about _____ he asked me about how many

Calder Hearing Tape 1, Side 2

page 32

I told him that in case that would have a
I told him that we have to say the same
He asked me the reason that
I asked him that maybe because the only one who can answer the qeustinon [*sic*] was the judge Moreno I told him that he that Calder was a _____ guy who worked for the federal government
Usually when people in Puerto Rico get shot
may have to go to jail.
I tried to explain that maybe was the reason that the Judge has

Brice: Let me interrupt you here. You put the low bails so as to really make sure that you can get out of jail with someone who lives outside of Aguidilla but I have lost the reason why it was important for someone who was outside Aguidilla.

What he said was that If I was charged for a crime here in Iowa I would be limited in my possibilities of getting someone to bail me out of jail
But you said high bail —
He resided in San Juan that is about 90 miles from Aguidilla — this is why they took this into consideration — they thought it was useless

Mr. Kutmus say that he was a gringo
I explain that he was not Puerto Rican

I told him that the day before we got in meeting I hear some say

asking for Judge
thats what I told him — we never, I never talked about _____ base we never talked about that. At that time I told Mr.
that _____ with the Supreme Court and asked him to

Calder Hearing Tape 1, Side 2

page 33

make a declaration that meeting was to be on the 6th of April

I say that I will try to check with the other lawyer

on the 13 of April — why that day — because he told us that he couldn't do the he had to bring Mr. Calder back to.

I told him that as soon as Mr. Calder show up we be available to talk about the use of
Mr. Calder asked me to in Puerto Rico. I told him that he will get he ask me about what and I told him that he will get.

Mr. Roman do you express to the hearing officer the situation of the past three years

Since 1978 my office has been present criminal charges a total of 64. One of them was a vehicle homicide. 8 was found guilty. One was

The guy who was charged with vehicle homicide he gets sentence for parole. The other 8 who were found guilty by jury all of their requests for special narcotic benefits we give them that benefit full requests from narcotic drug — we give them that benefit

Voice: They were allowed to return to North America — the United States — is that what you are saying — and they had — or was it they were paroled to their own home town in Puerto Rico.

Calder Hearing Tape 1, Side 2

page 34

Jesus — I think speaking No, what he is saying is that these people who were found guilty — 64 charges filed — there were 49 Americans (I got that) Of those 64 — jurys or judges found only 8 guilty (I got that) and he said of those 8 some got paroles and were allowed to serve that probation in the States. The rest of the 64 we present a dismissal.

Brice or Kutmus
Voice: None of them entered a plea of guilty? You said 8 were found guilty, does that include those who were tried and found guilty or was only one tried and found guilty and the others plead guilty?

Voice: Of those cases 64 no 65 found not guilty were 57 — found guilty 8

end of taped portion

[Exhibit N]

July 23, 1981

MR. BRICE OAKLEY, ESQ.
Legal Counsel to the Governor
Office of the Governor
State Capitol
Des Moines, Iowa 50319

RE: RONALD CALDER JOHNSON
Extradition (Governor's hearing of June 17, 1981)

Dear Sir:

We would very much appreciate it if you would instruct one of your assistants to kindly forward to the undersigned as soon as possible: a transcript of the hearing conducted on the 17th of June of 1981 regarding subject's extradition from Iowa to Puerto Rico, and a copy of the legal brief submitted by the defense in accordance with your instructions at the conclusion of the hearing.

Please inform this Unit in writing the points of law that the Honorable Governor Robert D. Ray is considering with you in order to reach a decision regarding subject's extradition.

It is still our firm position that matters outside of the scope of Section 425—4.4 (17A) of the Administrative Code of Iowa can not be considered by Governor Ray, as such a consideration not only violates Iowa law but the United States Constitution and Section 3182 of the United States Code as well.

Thank you for your assistance in this matter and please be assured of ours in any matter of your state's jurisdiction.

Sincerely,

/s/_____
ROBERT BUONO CRILLASCA
Special Prosecutor in Charge
of Extraditions
Criminal Division
Department of Justice

[Exhibit O(1)]

Office of the Governor
STATE CAPITOL
DES MOINES, IOWA

March 9, 1982

Ms. Lona Hansen
Assistant Attorney General
Hoover Building
L O C A L

Dear Lona:

Pursuant to the request of the Attorney General's office in Puerto Rico, I forwarded our Calder extradition hearing tapes to the Department of General Services for duplication.

I was subsequently informed by Bret Voorhees, the training officer, that tape No. one was successfully transcribed, but that tape No. two was destroyed in the process. We, of course, regret that very much, but I am forwarding the first tape duplicate to you.

Please feel free to forward it to Puerto Rico, explaining the circumstances which took place. You may verify this occurrence by contacting Mr. Voorhees at extention 6763.

Yours very truly,

/s/_____
BRICE C. OAKLEY
Administrative Counsel

enc: Calder tape

[Exhibit O(2)]

Department of Justice

March 18, 1982

Mr. Eduardo A. de Jesus Garcia
Special Prosecutor
Criminal Division
Department of Justice
P.O. Box 192
San Juan, Puerto Rico 00902

Re: Extradition of Ronald Calder [Johnson]

Dear Sir:

Enclosed please find a copy of the first tape of the June 17, 1981 hearing before Brice Oakley. As you can see from the enclosed letter, the second tape was destroyed in the duplicating process. Mr. Voorhees, who prepared the duplicate, told me that the tape became snarled in the high speed duplicator and ruined.

The tape that survived contains most of the evidence submitted by Mr. Calder and your initial objections to the admission of this evidence. I advise care in running the tape through your recorder; it became snarled at the end of the first side when I played it in my machine at "Fast Forward."

Sincerely,

/s/_____
LONA HANSEN
Assistant Attorney General

Enclosure

[Exhibit P]

JUAN ENRIQUE COLON
ABOCADO NOTARIO

September 22, 1981

Mr. Mark S. Pennington, Esq.
210 Fleming Building
218 Sixth Avenue
Des Moines, Iowa

RE: Ronald M. Calder

Dear Mr. Pennington:

This is to ratify in writing the conditions set forth to me by Mr. Pedro Colton, Chief Prosecutor for the Justice Department of the Commonwealth of Puerto Rico, in our last meeting held in San Juan, Puerto Rico on November 8, 1980.

In order to reach a reasonable agreement toward plea bargaining, Mr. Calder must return voluntarily at the earliest possible date. On his arrival, the Justice Department would agree to a reduction of bail to a maximum of $25,000.00 of which $10,000.00 should be posted in cash and the remaining $15,000.00 in bail bond or sureties. Afterwards, the District Attorney would consent to a change of venue if necessary, and, it is possible that at the date of trial, Mr. Calder could be allowed to enter a plea of guilty on the lesser charge of manslaughter, subject to the approval by the Court.

As you may now know, Mr. Calder could then qualify for probation if so recommended by the Parole Officer. If probation were granted, then in my opinion, and based on his qualifications, Mr. Calder could return to his homestate, or wherever he may be assigned to work in the United States subject to the supervision of the corresponding Parole Board.

I must emphasize that these conditions are subject to Mr. Calder's behaviour, and that I be retained and paid accordingly as local counsel for the defense.

Cont.

[Exhibit P]

JUAN ENRIQUE COLON
ABOCADO NOTARIO

September 22, 1981

Please contact me or the Justice Department as soon as Mr. Calder reaches a final decision.

This letter must be held in strict confidence and I do not authorize anyone to circulate the same to any person or entity whatsoever.

Yours truly,

/s/_____
JUAN ENRIQUE COLON

dlb
cc/Secretary Justice
Luis A. Roman, District Attorney

Supreme Court, U.S.
FILED
NOV 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-2116

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

COMMONWEALTH OF PUERTO RICO,
Petitioner,

v.

TERRY E. BRANSTAD, AND THE STATE OF IOWA,
RONALD CALDER, INTERVENOR,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR PETITIONER

HECTOR RIVERA CRUZ
Secretary of Justice
Commonwealth of Puerto Rico

RAFAEL ORTIZ CARRION
Solicitor General
Commonwealth of Puerto Rico

LINO J. SALDANA
Counsel of Record
SALDANA, REY, MORAN & ALVARADO
P.O. Box 13954
Santurce, Puerto Rico 00908
(809) 721-6345

SUSAN ESTRICH
TUTTLE & TAYLOR, INC.
355 South Grand Avenue
Los Angeles, California 90071

KATHLEEN M. SULLIVAN
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138

Attorneys for Petitioner

November 20, 1986

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

QUESTION PRESENTED

Should the 1861 decision in *Kentucky* v. *Dennison*, which permits a state governor absolute discretion to shelter a fugitive from a sister state in violation of the Extradition Clause, finally be explicitly overruled?

TABLE OF CONTENTS.

	PAGE
QUESTION PRESENTED	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
A. Introduction	3
B. The Underlying Crimes Charged in Puerto Rico	4
C. Puerto Rico's Extradition Request	5
D. Iowa's "Extradition Hearing"	6
E. Iowa's Denial of Puerto Rico's Request	8
F. The Proceedings Below	8
SUMMARY OF ARGUMENT	10
ARGUMENT	11
I. *KENTUCKY* v. *DENNISON* SHOULD BE OVERRULED BECAUSE IT UNDERMINES THE EXTRADITION CLAUSE'S GUARANTEE OF EFFICIENT CRIMINAL LAW ENFORCEMENT	14
II. *KENTUCKY* v. *DENNISON* SHOULD BE OVERRULED BECAUSE IT DEFEATS THE EXTRADITION CLAUSE'S MANDATE OF INTERSTATE COOPERATION AND RESPECT	20

PAGE

III. *KENTUCKY* v. *DENNISON* SHOULD BE OVERRULED BECAUSE IT CONFINES FEDERAL JUDICIAL POWER WITHIN LIMITS LONG ABANDONED BY THIS COURT 27

CONCLUSION 33

TABLE OF AUTHORITIES.

Cases:

Alfred L. Snapp & Son, Inc. v. *Puerto Rico*, 458 U.S. 592 (1982) 13n

Americana of Puerto Rico, Inc. v. *Kaplus*, 368 F.2d 431 (3d Cir. 1966), *cert. denied*, 386 U.S. 943 (1967) 22n

Apodaca v. *Oregon*, 406 U.S. 404 (1972) 25n

Appleyard v. *Massachusetts*, 203 U.S. 222 (1906) .. 10, 17, 21

Austin v. *New Hampshire*, 420 U.S. 656 (1975) 22

Baldwin v. *G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935) . 21

Baldwin v. *New York*, 399 U.S. 66 (1970) 25n

Beal v. *Missouri Pacific R.R.*, 312 U.S. 45 (1941) . 18

Biddinger v. *Commissioner of Police*, 245 U.S. 128 (1917) 10, 14, 17, 21, 27

Brown v. *Board of Education I*, 347 U.S. 483 (1954) . 30, 32

Brown v. *Board of Education II*, 349 U.S. 294 (1955) . . 30, 32

Commonwealth of Puerto Rico v. *Branstad*, 787 F.2d 423 (8th Cir. 1986) 1

Cooper v. *Aaron*, 358 U.S. 1 (1958) 30

PAGE

Dred Scott v. *Sandford*, 60 U.S. (19 How.) 393 (1857) . 29

Duncan v. *Louisiana*, 391 U.S. 145 (1968) 23, 25n

Examining Board v. *Flores de Otero*, 426 U.S. 572 (1976) 13n, 24n

Ex Parte Young, 209 U.S. 123 (1908) 29, 30

FERC v. *Mississippi*, 456 U.S. 742 (1982) 27, 31

Fry v. *United States*, 421 U.S. 542 (1975) 31n

Garcia v. *San Antonio Metropolitan Transit Authority*, 105 S.Ct. 1005 (1985) 31, 32

Gideon v. *Wainwright*, 372 U.S. 335 (1963) 23

Griffin v. *County School Board*, 377 U.S. 218 (1964) . 30

Hadley v. *Junior College District*, 397 U.S. 50 (1970) . 30

Hicks v. *Miranda*, 422 U.S. 332 (1975) 18

H.P. Hood & Sons, Inc. v. *Du Mond*, 336 U.S. 525 (1949) 22

Huffman v. *Pursue*, 420 U.S. 592 (1975) 18

Innes v. *Tobin*, 240 U.S. 127 (1916) 12n

Kelly v. *Robinson*, 55 U.S.L.W. 4011 (U.S. Nov. 12, 1986) 17

Kentucky v. *Dennison*, 65 U.S. (24 How.) 66 (1861) . *passim*

Kopel v. *Bingham*, 211 U.S. 468 (1909) 13n

Lascelles v. *Georgia*, 148 U.S. 537 (1893) 14

Malloy v. *Hogan*, 378 U.S. 1 (1964) 23

Mapp v. *Ohio*, 367 U.S. 643 (1961) 23

Marbury v. *Madison*, 5 U.S. (1 Cranch) 137 (1803) . 32n

Michigan v. *Doran*, 439 U.S. 282 (1978) 10, 12, 14n, 15, 18-19

Milliken v. *Bradley II*, 433 U.S. 267 (1977) 30

Milwaukee County v. *White Co.*, 296 U.S. 268 (1935) . 22

PAGE

Monell v. *Department of Social Services*, 436 U.S. 658 (1978) 24

Monroe v. *Pope*, 365 U.S. 167 (1961) 24

National League of Cities v. *Usery*, 426 U.S. 833 (1976) 31

Nevada v. *Hall*, 440 U.S. 410 (1979) 26

New York v. *Miln*, 36 U.S. (11 Pet.) 102 (1837) 29

NLRB v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937) 29

O'Shea v. *Littleton*, 414 U.S. 488 (1974) 18

acific Employees Insurance Co. v. *Industrial Accident Comm'n*, 306 U.S. 493 (1939) 26n

Pacileo v. *Walker*, 449 U.S. 86 (1980) 14n, 19

Philadelphia v. *New Jersey*, 437 U.S. 617 (1978) ... 22

Prigg v. *Pennsylvania*, 41 U.S. (16 Pet.) 539 (1842) . 12n

Reynolds v. *Sims*, 377 U.S. 533 (1964) 30

Richmond Newspapers, Inc. v. *Virginia*, 448 U.S. 555 (1980) 15n

Rizzo v. *Goode*, 423 U.S. 362 (1976) 18n

Roberts v. *Reilly*, 116 U.S. 80 (1885) 12n

Robinson v. *California*, 370 U.S. 660 (1962) 25

Rodriguez v. *Popular Democratic Party*, 457 U.S. 1 (1982) 24

Solem v. *Helm*, 463 U.S. 277 (1983) 25

Screws v. *United States*, 325 U.S. 91 (1945) 24

Silver v. *Garcia*, 760 F.2d 33 (1st Cir. 1985) 22n

South Dakota v. *Brown*, 576 P.2d 473 (1978) 16n, 23n

Steward Machine Co. v. *Davis*, 301 U.S. 548 (1937) . 29

Stone v. *Powell*, 428 U.S. 465 (1976) 19, 26

Supreme Court of New Hampshire v. *Piper*, 105 S.Ct. 1272 (1985) 22

PAGE

Swann v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) 30

Sweeney v. *Woodall*, 344 U.S. 86 (1952) 14n, 19

Testa v. *Katt*, 330 U.S. 386 (1947) 31n, 33

Toombs v. *Fortson*, 241 F.Supp. 65 (N.D. Ga.) (per curiam), *aff'd mem.*, 384 U.S. 210 (1966) 30

Toomer v. *Witsell*, 334 U.S. 385 (1948) 21

Torres v. *Puerto Rico*, 442 U.S. 465 (1979) 24

United Building and Construction Trades v. *City of Camden*, 104 S.Ct. 1020 (1984) 22

United States v. *Darby*, 312 U.S. 100 (1941) 29

Washington v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979) . 31n

Watson v. *Buck*, 313 U.S. 387 (1941) 18

Wickard v. *Filburn*, 317 U.S. 111 (1942) 29

Wolf v. *Au*, 686 P.2d 16 (Haw. 1984) 13n

Younger v. *Harris*, 401 U.S. 37 (1971) 18, 19

Constitutional Provisions:

United States Constitution

The Extradition Clause (Article IV, § 2, cl. 2) ... *passim*
The Supremacy Clause (Article VI, cl. 2) 33
Tenth Amendment 31

Constitution of the Commonwealth of Puerto Rico, Art. II §§ 1-20, L.P.R.A. Vol. 1 (1982) 24n

Statutes and Rules:

18 U.S.C. § 3182 ..... *passim*
28 U.S.C. § 1254(1) 2
28 U.S.C. § 1331 ..... 9n

PAGE

28 U.S.C. § 1343(3) 24n

42 U.S.C. § 1983 ..... 24n

48 U.S.C. § 731(c) 24

48 U.S.C. § 737 ..... 22n

Uniform Criminal Extradition Act, 11 Uniform Laws Annot. (West 1974) 15, 16, 16n

Puerto Rico Penal Code of 1975, 33 L.P.R.A. 3021-4628 (1983) 25n

Puerto Rico Rules of Criminal Procedure, 34 L.P.R.A. App. II, R.-254 (1971) 25n

Miscellaneous:

Clark and Rogers, *The New Judiciary Act of Puerto Rico: A Definitive Court Reorganization*, 61 Yale L.J. 1147 (1952) 25n

B. Currie, *The Constitution in the Supreme Court: The First Hundred Years, 1789-1888* (1985) 28

Negron Garcia, *Puerto Rico Updates its Courts*, 58 J. Am. Jud. Soc. 350 (1975) 25n

Trias Monge, El Sistema Judicial de Puerto Rico (1978) 25n

Murphy, *Revising Domestic Extradition Law*, 131 U.Penn. L. Rev. 1063 (1983) 24

New York Times, Dec. 23, 1932, p. 7, cols. 1-2 ..... 22n

New York Times, Dec. 28, 1932, p. 36, col. 4 ..... 22n

New York Times, Sept. 2, 1937, p. 8, cols. 4-5 ..... 23n

New York Times, Sept. 3, 1937, p. 6, col. 6 ..... 23n

Note, *Interstate Rendition: Executive Practices and the Effects of Discretion*, 66 Yale L.J. 97 (1956) 23n

C. Swisher, *History of the Supreme Court of the United States, Vol. V: The Taney Period (1863-64)* (1974) ... 28

No. 85-2116

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

COMMONWEALTH OF PUERTO RICO,
Petitioner,

v.

TERRY E. BRANSTAD, AND THE STATE OF IOWA,
RONALD CALDER, INTERVENOR,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR PETITIONER

OPINIONS BELOW

The unreported opinion and order of the District Court for the Southern District of Iowa, denying the Commonwealth of Puerto Rico's application for a writ of mandamus to compel extradition of a fugitive and dismissing the Commonwealth's complaint, is reprinted as Appendix B to the Petition for Certiorari, Pet. App. A10-A15. The opinion of the Court of Appeals affirming that denial, *Commonwealth of Puerto Rico* v. *Branstad*, 787 F.2d 423 (8th Cir. 1986), is reprinted as Appendix A to the Petition for Certiorari, Pet. App. A1-A9.

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered on March 28, 1986 (see Appendix C to the Petition for Certiorari, Pet. App. A16). That judgment affirmed the judgment of the District Court for the Southern District of Iowa, entered May 21, 1985 (see Appendix B to the Petition for Certiorari, Pet. App. A15). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 2, Clause 2 of the Constitution of the United States, the Extradition Clause, provides that:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction over the Crime.

The Extradition Clause is implemented by the Extradition Act, 18 U.S.C. § 3182, which provides that:

> Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate

of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which the person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

STATEMENT OF THE CASE

A. Introduction

The issue in this case is whether the federal courts must stand idly by while a state governor shelters an accused murderer from justice in the courts of a sister state. Over five years ago in Puerto Rico, Ronald Calder drove his car into a married couple in a grocery store parking lot after arguing and scuffling with them. The husband lived; his eight months pregnant wife and unborn child were killed. Puerto Rico charged Calder with murder and attempted murder. Calder fled to Iowa, where two successive state governors have sheltered him ever since by denying Puerto Rico's request for extradition.

There is no dispute in this case that Puerto Rico's extradition request fully complied with all constitutional and statutory requirements. Nor is there any dispute that the governor of Iowa had a federal constitutional duty to comply with that re-

quest. All that is at issue in this case is whether an ancient decision of this Court frees the governor of Iowa to violate that duty with impunity. For this Court held on the brink of the Civil War that, although a governor is bound by the federal Constitution to extradite a fugitive upon proper request, a federal court cannot command him to do so. *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66 (1861). And both the district court and the court of appeals below deemed themselves unable to order the extradition of Calder because they were powerless to overrule *Dennison*. The facts of this case demonstrate why that decision must be overruled by this Court.

B. The Underlying Crimes Charged in Puerto Rico

The following facts are undisputed.[1] On January 25, 1981, Ronald Calder struck two people with his car in Aguadilla, Puerto Rico. One was Army Villalba De Jesus, a woman eight months pregnant at the time. Pet. App. A17. Both she and her unborn child were killed. *Id.* The other was her husband, Antonio De Jesus Gonzalez, who was injured but not killed. *Id.* Calder was arrested, charged with homicide, and released later the same day. Pet. App. A17-A18.

On February 4, 1981, a judge of the Puerto Rico Superior Court found that probable cause existed to charge Calder with murder and attempted murder. Pet. App. A18; J.A. 14a-17a. He did so only after a preliminary hearing at which he heard sworn testimony from witnesses to the alleged crimes. The witnesses' accounts to the court suggested that the death of Mrs. Villalba De Jesus and injury to her husband were not accidental. The sworn witnesses told the court that Calder had deliberately run the couple down after an argument with Mr.

[1] The mandamus action below was decided on the basis of a stipulated record. The stipulation is reprinted as Appendix D to the Petition for Certiorari, Pet. App. A17-A21.

De Jesus Gonzalez, and had run his car over Mrs. Villalba De Jesus's body repeatedly after she was down. Pet. App. A18. The District Attorney filed informations against Calder for murder and attempted murder on February 27, 1981. Pet. App. A28-A33.

Calder was freed after posting bail, but failed to appear at either of two preliminary hearings scheduled in his case. Pet. App. A18. On April 13, 1981, after a fruitless police search for Calder in and around his home, a second judge of the Superior Court declared Calder a fugitive from justice and issued a warrant for his arrest. Pet. App. A19, A25-A27. Calder was quickly traced by Puerto Rico police to Iowa, and the relevant Iowa authorities notified that he was a fugitive wanted for murder and attempted murder in Puerto Rico. Pet. App. A19; J.A. 18a. Calder surrendered to Iowa authorities but was released upon posting $20,000 bond. Pet. App. A19.

C. Puerto Rico's Extradition Request

A formal request for Calder's extradition was submitted by Governor Carlos Romero Barcelo of the Commonwealth of Puerto Rico to Governor Robert Ray of Iowa on May 15, 1981. Pet. App. A19, A22-A23. Accompanying the request were copies of the following documents: the order declaring Calder a fugitive and a warrant for his arrest (Pet. App. A25-A27), the informations filed by the district attorney charging Calder with first degree murder and with attempted murder (Pet. App. A28-A33), and three sworn statements by eyewitnesses to the charged crimes (Pet. App. A34-A43). The Governor authenticated the request, affirming that Calder had been charged with crimes under Puerto Rico law, that probable cause had been found by a duly constituted court of the Commonwealth, and that Calder was a fugitive from justice. Pet. App. A22-A23. As Iowa has conceded throughout this case

(*see* Pet. App. A20; J.A. 24a), Governor Romero Barcelo's extradition request was in proper form and met all relevant statutory requirements.

D. Iowa's "Extradition Hearing"

Notwithstanding the complete absence of controversy about the propriety of Puerto Rico's extradition request, Governor Ray of Iowa ordered that a hearing take place "[i]n order to give the Iowa Governor's Office a full picture of the facts and circumstances surrounding the offense" (J.A. 19a), and appointed his own legal counsel to conduct it. Pet. App. A19; J.A. 20a. That hearing began June 17, 1981.[2] The proceedings were "informal"; the Iowa governor's counsel announced at the outset that "no technical rules of evidence" or "substantial degrees of proof and the like" would apply. J.A. 21a.

No question was raised at the hearing about whether the extradition documents were in order, whether Puerto Rico had in fact charged Calder with crimes, whether Calder was in fact the person wanted in Puerto Rico, or whether Calder was in fact a fugitive. Instead, Calder himself, one of Calder's lawyers, and Calder's companion at the scene of the alleged murder and attempted murder, were each permitted to testify — under direct examination by Calder's lawyer, William Kutmus — about their own personal views of the events of January 25, 1981, and their own personal views of the quality of justice administered in Puerto Rico's courts.

First, one of Calder's lawyers, Mark Pennington, was permitted to testify about his personal view that "a white American man" "could not receive a fair trial in the Commonwealth of

---

[2] The extradition hearing was tape-recorded, but only a partial transcript survives, because the State of Iowa destroyed the second of the two tapes. *See* Pet. App. A20; J.A. 55a-56a. The transcript of the first tape, which is itself incomplete and riddled with gaps, is reprinted at J.A. 21a-53a.

Puerto Rico." J.A. 32a. When questioned about the basis for that view, he testified that although he did not speak Spanish, he had had conversations with "anybody that [he] would run across" during a brief visit to Puerto Rico, and that those conversations with unnamed persons had confirmed his view. J.A. 33a-34a.

Next, Calder's companion at the scene of the alleged crimes, Gene Miller, was permitted to report his "personal opinion" that "the whole thing . . . has been blown up out of proportions." J.A. 36a. And Miller was further allowed to testify that a "crowd" had supposedly yelled that "'gringos will not leave the island alive.'" J.A. 41a. Miller claimed to believe this supposed threat notwithstanding his testimony that Puerto Rico had provided both him and Calder with ample protection at every stage of the criminal proceedings. *See* J.A. 37a, 39a. Finally Kutmus was permitted to lead Miller into testifying that there is "an ethnic practice that eminates [*sic*] from the Puerto Ricans against North Americans — whites," and that there is "hostility that exists between [the] two nationalities." J.A. 43a.

Calder himself was next permitted to testify. He was allowed to report rumors he had heard that "witnesses had been bought off" in some cases in Puerto Rico, although he candidly acknowledged that "it may just be hearsay." J.A. 47a. And he was allowed to state his conclusion that "there really didn't look like there was a chance to get a fair trial." J.A. 48a.

Counsel for Puerto Rico present at the hearing repeatedly objected to the form and content of all of this testimony, arguing that it was inadmissible because "self serving" and "based on hearsay" (J.A. 49a), and that it went beyond the scope of matters relevant to extradition. *See* J.A. 38a, 44a, 49a. In keeping with their view that the entire proceeding was invalid, they declined to cross-examine the witnesses. *See* J.A. 34a, 44a. The Iowa governor's representative at the hearing ignored those objections, stating that he was "going to permit

them [i.e., Calder's attorney Kutmus and his witnesses] to go ahead and present this testimony." J.A. 38a.

E. Iowa's Denial of Puerto Rico's Request

Following the extradition hearing, counsel for Calder and prosecutors in Puerto Rico discussed the possibility of a plea bargain. Pet. App. A20. Puerto Rico prosecutors were willing to consider a plea of guilty to manslaughter with a recommended sentence of probation, and were willing to consider a change of venue if the murder charge were ultimately to go to trial. *See* J.A. 57a. But Puerto Rico conditioned final agreement to a plea upon Calder's voluntary return to Puerto Rico first. Calder refused to comply with that condition. Pet. App. A20; J.A. 57a-58a. Governor Ray attempted to intercede on Calder's behalf by arguing directly with Governor Romero Barcelo. Pet. App. A20.

On December 28, 1981, Governor Ray formally denied Puerto Rico's extradition request, noting his "disappoint[ment]" that Iowa had been unable to persuade Puerto Rico to prosecute Calder's case in the way Iowa saw fit, and chiding Puerto Rico for its "unwillingness to get the criminal charge to something more justifiable." Pet. App. A44-A45. A renewed request for extradition to newly elected Iowa Governor Terry Branstad was likewise denied. Pet. App. A21.

F. The Proceedings Below

On February 15, 1984, the Commonwealth of Puerto Rico filed a complaint in the United States District Court for the Southern District of Iowa, seeking a writ of mandamus directing the Iowa Governor to grant the extradition demand. J.A. 2a-8a. Puerto Rico claimed that Iowa's denial of extradition violated the Extradition Clause of the federal Constitution, and

the federal Extradition Act, 18 U.S.C. § 3182. J.A. 8a.[3] The district court denied the writ and dismissed the complaint, considering itself bound by this Court's decision in *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66 (1861), that even though a Governor's duty to extradite is mandatory under the Constitution, that duty cannot be enforced by a writ of mandamus from a federal court. *See* Pet. App. A12-A14. Acknowledging that the reasoning underlying the holding of *Dennison* was clearly out-of-date, the district court could not "say with certainty that the Supreme Court would overrule *Kentucky* v. *Dennison* if confronted with the mandamus issue today." Pet. App. A14.

The United States Court of Appeals for the Eighth Circuit "[r]eluctantly" affirmed, in an opinion and order issued March 28, 1986. Pet. App. A2. The court concluded that because Puerto Rico's extradition request "met all constitutional requirements," the Iowa Governor was "act[ing] in clear contravention of the Constitution in refusing extradition because he questions the severity of the crime" and was "sitting in judgment on Puerto Rico's actions . . . [and] accusing Puerto Rico of having a sub-standard [system] of criminal justice." Pet. App. A7 & n.7. Nonetheless, the Eighth Circuit felt "constrained" by its "[un]certainty that the Supreme Court would overrule *Dennison* if the same issue were presented to the Court today." Pet. App. A2, A4. In denying relief, the court unanimously concluded: "we cannot emphasize too strongly our deep conviction that the underpinnings of *Dennison* during the past 125 years have been so seriously undermined — especially in view of the mandatory provision of the Extradition Clause of the Constitution — as to suggest reconsideration by the only Court empowered to do so." Pet. App. A9.

---

[3] The jurisdiction of the district court was invoked under 28 U.S.C. § 1331. A motion for leave to file complaint had previously been filed with this Court based on its original jurisdiction. This motion was denied on January 9, 1984.

SUMMARY OF ARGUMENT

As this Court has repeatedly recognized, the Extradition Clause was intended "to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed." *Michigan* v. *Doran*, 439 U.S. 282, 287 (1978), citing *Biddinger* v. *Commissioner of Police*, 245 U.S. 128, 132-33 (1917); *Appleyard* v. *Massachusetts*, 203 U.S. 222, 227 (1906). It was likewise intended to preserve harmony and comity among the states by "preclud[ing] any state from becoming a sanctuary for fugitives from justice of another state and thus 'balkaniz[ing]' the administration of criminal justice among several states." *Michigan* v. *Doran*, 439 U.S. at 287.

The facts of this case reflect the complete frustration of both these purposes. Five years after charges of murder and attempted murder were duly brought against him in Puerto Rico, Ronald Calder remains a fugitive from justice. Iowa has become Calder's "sanctuary" and Puerto Rico, having complied in every detail with all constitutional and statutory requirements for extradition, has been unable to enforce its criminal laws. The quality and integrity of the judicial system of Puerto Rico have been attacked, and judged "sub-standard," by the executive branch of a sister state. The constitutional norms of comity and respect for each state's integrity on which the Extradition Clause is premised have been flagrantly and blatantly violated.

Nonetheless, both the district court and the court of appeals considered themselves bound by this Court's decision well over 100 years ago in *Kentucky* v. *Dennison*, 65 U.S. (24 How.) 66 (1861), that a federal court lacks power to remedy a state governor's clear violation of the Extradition Clause of the Constitution. That holding of *Kentucky* v. *Dennison* plainly frustrates the purposes of the Extradition Clause. It arose in a social context that no longer exists — a nation torn apart over

the institution of slavery — and was based on legal theories of federalism that have long since been abandoned by this Court. Few cases could demonstrate as plainly as this one does why *Dennison* should now be overruled, and the federal courts permitted to curb the limitless discretion that state governors now enjoy to give fugitives a safe asylum in their states.

ARGUMENT

When the nation's founders decided how our federal system should deal with fugitives from criminal justice, they plainly decided against permitting the states *to* which such fugitives might flee to try them for their crimes. Rather the Framers chose, in the plainest possible constitutional text, to require fugitives to be returned to stand trial in the state *from* which they had fled — that is, the states where they committed the crimes with which they are charged. The Extradition Clause provides that:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction over the Crime.

Article IV, Section 2, cl. 2.[4]

---

[4] The Extradition Clause was carried over virtually intact from the Articles of Confederation, which likewise had imposed an absolute requirement that fugitives be returned to stand trial in the state where the crime had been committed. *See Kentucky* v. *Dennison*, 65 U.S. at 101-02.

The authority of Congress to implement this provision of the Constitution has long been regarded as beyond question.[5] And Congress has chosen to implement the Extradition Clause by imposing the duty to extradite specifically on the "executive authority" of the asylum state. In the federal Extradition Act, in language virtually unchanged from its original enactment in 1793, *see Michigan* v. *Doran*, 439 U.S. at 287 n.6, Congress has provided that:

> Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of [the demanding state or territory] charging the person demanded with having committed [a] crime, certified as authentic by the governor . . . [of the demanding state or territory], the executive authority of [the asylum state, district or territory] shall cause him to be arrested and secured, . . . and . . . delivered [to the demanding state or territory].

18 U.S.C. § 3182.

The judgment below permits the asylum state, Iowa, to flout with impunity the plain commands of both the Constitution and federal statute. It does so notwithstanding the perfect compliance of the demanding state, Puerto Rico, with all the constitutional and statutory requirements just quoted.[6] And it does

---

[5] *See Michigan* v. *Doran*, 439 U.S. at 287, citing *Innes* v. *Tobin*, 240 U.S. 127, 131 (1916); *Prigg* v. *Pennsylvania*, 41 U.S. (16 Pet.) 539, 617 (1842); *see also Roberts* v. *Reilly*, 116 U.S. 80, 94 (1885), citing *Kentucky* v. *Dennison*, 65 U.S. at 104.

[6] It has never been suggested by any of the parties to this case, or either of the courts below, that Puerto Rico should be treated differently than a state for

so notwithstanding that an accused murderer thereby gains wholesale immunity from trial for his alleged crimes.

The sole support for the judgment below is the ultimate holding of *Kentucky* v. *Dennison*. The body of Chief Justice Taney's opinion for the Court in *Dennison*, which held that

---

purposes of the Extradition Clause, or of the federal statute implementing that clause. Such a claim, if raised belatedly now, would be wholly meritless.

To be sure, the Extradition Clause applies on its face only to a "State." But Congress extended both the rights and obligations of extradition to any "State *or* Territory," and it is easy to see why: as this Court has recognized, to fail to do so would have left the territories to serve as convenient havens for fugitives just beyond state boundaries. In *Kopel* v. *Bingham*, 211 U.S. 468 (1909), for example, the Court upheld the obligation of New York's governor to comply with an extradition request by Puerto Rico, stating that "the power to extradite fugitive criminals as between State and Territory is as complete as between one State and another." *Id.* at 474. As the Court continued, "[i]t is impossible to hold that Porto Rico was not intended to have power to reclaim fugitives from its justice," for it was likewise impossible that Puerto Rico "was intended to be created an asylum for fugitives from the United States." *Id.* *Kopel* was recently followed explicitly in a case upholding the extradition of a criminal defendant from Hawaii to the Federated States of Micronesia, which the United States supervises as a trust territory. *See Wolf* v. *Au*, 686 P.2d 16, 22 (Haw. 1984).

True enough, Puerto Rico is today a Commonwealth, and no longer a "Territory." But there can be no reason in logic or policy to suppose that Congress, in implementing the will of the Framers, intended the rights and obligations of extradition to apply to territories but not commonwealths. If anything, Puerto Rico's constitution as a commonwealth in 1952 only enhanced Puerto Rico's status within our federal system: "the purpose of Congress in the 1950 and 1952 legislation was to accord Puerto Rico the degree of autonomy and independence normally associated with States of the Union," *Examining Board* v. *Flores de Otero*, 426 U.S. 572, 594 (1976), while subjecting it like any state to the provisions of the United States Constitution, *see id.* at 593 & n.25. Accordingly, there can be no doubt about Puerto Rico's standing to challenge the judgment below as violative of both the Extradition Clause and the Extradition Act. *Cf. Alfred L. Snapp & Son, Inc.* v. *Puerto Rico*, 458 U.S. 592, 609-10 (1982) (upholding Puerto Rico's standing to bring a parens patriae action to enforce a federal statute reasoning that Puerto Rico's position was "not distinguishable from that of Georgia . . . or from that of Maryland").

the duty of an asylum state governor to extradite upon proper request is absolute, mandatory, and indeed merely "ministerial," 65 U.S. at 107, is of course now well-established law.[7] *Dennison* held in its waning pages, however, that if a governor chooses to violate that duty, as did Governors Ray and Branstad here, the federal government is powerless to do anything about it. *See* 65 U.S. at 109-10. That holding in effect vests state governors with unfettered discretion to refuse to extradite fugitives as they please, undermining both criminal law enforcement and interstate comity in their wake.

I. *KENTUCKY* v. *DENNISON* SHOULD BE OVERRULED BECAUSE IT UNDERMINES THE EXTRADITION CLAUSE'S GUARANTEE OF EFFICIENT CRIMINAL LAW ENFORCEMENT.

In this case Ronald Calder has found precisely what the nation's founders sought to ensure that fugitives from justice would never find: he has found "in one State an asylum against the processes of justice of another." *Biddinger* v. *Commissioner*, 245 U.S. at 132; *see Lascelles* v. *Georgia*, 148 U.S. 537 (1893). Sheltered in that asylum by the governor of Iowa, Calder has escaped trial in Puerto Rico for the murder and attempted murder with which he is charged. By freeing the governor of Iowa to furnish Calder such asylum, unchecked by the courts below, *Kentucky* v. *Dennison* undermines entirely the concern with criminal law enforcement that is at the core of the Extradition Clause.

The Framers articulated the duty to extradite "in mandatory language" in order "to enable each state to bring offenders to

---

[7] *See, e.g., Pacileo* v. *Walker*, 449 U.S. 86, 87-88 (1980) (per curiam); *Michigan* v. *Doran*, 439 U.S. at 288; *Sweeney* v. *Woodall*, 344 U.S. 86, 90 (1952).

trial as swiftly as possible in the state where the alleged offense was committed." *Michigan* v. *Doran*, 439 U.S. at 287.[8] As Chief Justice Taney noted in *Dennison*, the Framers viewed the preservation of law and order in each state as dependent upon the mutual aid mandated by the Extradition Clause: "this was not a compact of peace and comity between separate nations who had no claim on each other for mutual support, but a compact binding them to give aid and assistance to each other in executing their laws, and to support each other in preserving order and law within its confines, whenever such aid was needed and required." 65 U.S. at 100.

In order to preserve the states' ability to maintain "order and law within their respective borders," *id.* at 103, "[i]nterstate extradition was intended to be a summary and mandatory executive proceeding," *Michigan* v. *Doran*, 439 U.S. at 288. The federal Extradition Act, like the constitutional clause it implements, speaks in summary and mandatory language: upon proper request, the governor of an asylum state "*shall* cause [a fugitive] to be arrested and secured," and "*shall* cause [that] fugitive to be delivered." 18 U.S.C. § 3182 (emphasis added). The Uniform Criminal Extradition Act, which has been enacted by forty-eight states, including Iowa, as well as by Puerto Rico and the Virgin Islands, likewise provides that, upon demand, "it is the *duty* of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who

---

[8] The value of trying crimes in the community in which they were committed has been stressed by this Court in other contexts. For example, as Chief Justice Burger wrote for the Court in *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555 (1980), local trial helps to generate "public acceptance of both the process and [the] results" of the criminal justice system, *id.* at 569, which in turn prevents criminal law enforcement from falling into the hands of the "victim and the vigilante," *id.* at 571.

has fled from justice and is found in this state." Uniform Criminal Extradition Act, section 2, in 11 Uniform Laws Annot. (West 1974) at 61 (emphasis added).[9]

The Court in *Kentucky* v. *Dennison* itself did not question the absolute and mandatory nature of the duty to extradite upon proper request. Quite the contrary, as Chief Justice Taney wrote for the Court after an exhaustive review of the history and purposes of the Extradition Clause and its implementing statute, the duty of an asylum state governor presented with a proper extradition request is "merely ministerial." 65 U.S. at 107. That governor "has no right to look behind . . . or to question" the criminal charges of the demanding state, "or to look into the character of the crime specified." *Id.*[10] Any such second-guessing, wrote Taney, "would render the clause useless for any practical purpose." *Id.* at 102.

But having deemed such second-guessing a flat violation of constitutional and statutory duty, *Dennison* completely insulated it from federal oversight. For if a governor chose to violate his duty, Chief Justice Taney wrote, neither Congress nor the federal courts could command him to obey it. *See* 65 U.S. at 109-10. *Dennison* thus converted the mandatory duty imposed by the Constitution and federal statute into a wholly discretionary decision of the asylum state's governor.[11]

---

[9] The federal and state acts require extradition upon receipt of the forms of documentation provided by Puerto Rico here: "a copy of an indictment found or an affidavit made before a magistrate of any State of Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled." 18 U.S.C. § 3182; *see also* Uniform Criminal Extradition Act, § 3 (same requirement).

[10] In keeping with this view, the Uniform Criminal Extradition Act expressly forbids inquiry by the asylum state governor into the guilt or innocence of a fugitive whose extradition has been demanded in proper form. Uniform Criminal Extradition Act, § 20, in 11 Uniform Laws Annot. (West 1974) at 270.

[11] Nor is relief from a governor's refusal to extradite likely to be available in an asylum state's forums. In *South Dakota* v. *Brown*, 576 P.2d 473 (1978),

Such unbridled discretion wholly undermines the "first concern" of the Extradition Clause — "securing a prompt and efficient administration of the criminal laws of the several States." *Appleyard* v. *Massachusetts*, 203 U.S. at 227-28. At best, *Dennison's* holding of federal immunity for a recalcitrant governor allows him to defeat the "prompt and efficient" administration of criminal justice. For he may delay extradition as long as he likes while he considers whatever issues he chooses, meanwhile forcing the requesting state to defend the integrity of its processes in the executive branch of another state. At worst, as in this case, *Dennison* permits a recalcitrant governor unilaterally to block the requesting state from enforcing its criminal laws at all. Thus *Kentucky* v. *Dennison*, contrary to the express intent of the Framers, the words of the Constitution, and the legislation of Congress, allows a state to become "a shield for the guilty." *Biddinger* v. *Commissioner*, 245 U.S. at 132-33.

Kentucky v. *Dennison* not only is inconsistent with the intent of the Framers, the words they used, and the legislation Congress enacted to implement those words; it is also irreconcilable with recent decisions of this Court protecting the integrity of the states' criminal justice systems. As this Court only recently reiterated in another context, "[t]he right to formulate and enforce penal sanctions is an important aspect of the sovereignty retained by the states." *Kelly* v. *Robinson*, 55 U.S.L.W. 4011, 4014 (U.S. Nov. 12, 1986). In no modern decision by this Court is state criminal law enforcement given as short shrift as it is by *Kentucky* v. *Dennison*.

---

for example, the California Supreme Court, relying on *Dennison*, held itself powerless to order Governor Jerry Brown to comply with an extradition request by South Dakota. The fugitive sought was Dennis Banks, a Native American activist who had been convicted in South Dakota of riot while armed with a dangerous weapon and assault with a dangerous weapon with intent to kill.

First, this Court has required of federal courts deference to ongoing state criminal proceedings that are brought, as here, in good faith. Had Ronald Calder sought to enjoin the Puerto Rico criminal action in a federal court, he would have been squarely barred by the doctrine of *Younger* v. *Harris*, 401 U.S. 37 (1971); *see Hicks* v. *Miranda*, 422 U.S. 332 (1975); *Huffman* v. *Pursue*, 420 U.S. 592 (1975); *O'Shea* v. *Littleton*, 414 U.S. 488, 499-501 (1974); *see also Rizzo* v. *Goode*, 423 U.S. 362, 380 (1976).[12] This requirement of federal judicial abstention from interference with state criminal proceedings reflects the principle that "[n]o citizen is immune from prosecution, in good faith, for his alleged criminal acts." *Younger* v. *Harris*, 401 U.S. at 46, quoting *Watson* v. *Buck*, 313 U.S. 387, 400 (1941); *Beal* v. *Missouri Pacific R.R.*, 312 U.S. 45, 49 (1941). While *Younger*, to be sure, was animated by concern for comity between the federal government and the states, the Extradition Clause mandates no less comity between state and state. Yet *Kentucky* v. *Dennison* effectively allows criminal defendants to do in a state capitol before state employees what the *Younger* line of cases bars them from doing in a federal court before Article III judges: shut down ongoing state criminal proceedings.

Second, this Court has forbidden both state and federal courts from doing in habeas corpus proceedings brought by fugitive criminal defendants precisely what *Dennison* would permit state governors to do: sit in judgment both of the guilt or innocence of the accused and the quality of justice in the demanding state's courts. Had Ronald Calder sought to vent his unfounded fears about Puerto Rico's criminal laws and processes in the state or federal courts of Iowa in a habeas proceeding, he again would have been squarely barred. In

[12] Principles of federal judicial deference to ongoing state proceedings apply with at least equal force to Puerto Rico proceedings. *See, e.g., Fornaris* v. *Ridge Tool Co.*, 400 U.S. 41 (1970); *Romany* v. *Colegio de Abogados*, 742 F.2d 32 (1st Cir. 1984).

Michigan v. *Doran*, this Court held that the state courts of an asylum state were forbidden, in a habeas corpus proceeding, from undertaking any inquiry into the basis for the demanding state's finding of probable cause. 439 U.S. at 239. And in *Pacileo* v. *Walker*, this Court held that an asylum state's courts were likewise forbidden on habeas "to conduct an inquiry into the present conditions of the [demanding state's] penal system." 449 U.S. at 88. This holding followed from this Court's earlier imposition of similar limits on a federal court reviewing a fugitive's habeas petition; in *Sweeney* v. *Woodall*, 344 U.S. 86 (1952), this Court held that a fugitive from Alabama was barred from challenging the constitutionality of his confinement in the federal courts of Ohio, the state to which he had fled. *See id.* at 90. *Kentucky* v. *Dennison*, however, invites criminal defendants to make the very same challenges before the governor's employees that they are forbidden from making before state or federal judges.

Underlying both *Younger* and *Doran* is the presumption that criminal defendants may fully and fairly litigate any federal constitutional claims they might have by way of defense in the criminal proceedings of the state in which they are charged. That presumption is fully applicable in this case as well. State courts, this Court has repeatedly stressed, are no less capable than federal courts of protecting federal constitutional rights. *See, e.g., Stone* v. *Powell*, 428 U.S. 465, 493-94 n.35 (1976). And the federal constitutional rights of any criminal defendant are protected as fully in Puerto Rico's courts as in the courts of any state in the union — including Iowa's. *See* p. 24 & nn. 17-18 *infra*.

Against the backdrop of *Younger* and *Doran*, *Kentucky* v. *Dennison* appears as anomaly. For it leaves open a unique escape hatch through which criminal defendants may flee the force of state criminal proceedings. A state criminal defendant may not find refuge in federal court by bringing actions there for injunctive and declaratory relief. Nor, if he flees to another

state, can he find refuge by putting his case or his constitutional claims on trial before a state or federal habeas court. Under *Kentucky* v. *Dennison*, however, that same criminal defendant may find complete and permanent refuge so long as he escapes over the border and into the chambers of a sympathetic state executive. This last hole in the integrity of state criminal proceedings may be patched only by overturning *Dennison*.

II. *KENTUCKY* v. *DENNISON* SHOULD BE OVERRULED BECAUSE IT DEFEATS THE EXTRADITION CLAUSE'S MANDATE OF INTERSTATE COOPERATION AND RESPECT.

Kentucky v. *Dennison* leaves an asylum state governor free to frustrate the Constitution's "concern for . . . comity in extradition," *Michigan* v. *Doran*, 439 U.S. at 296 (Blackmun, J., concurring in result), by allowing him to sit in judgment of the demanding state's courts with absolute impunity. The state court inquiry prohibited in *Michigan* v. *Doran* was a most mild assault on comity when compared to the prior proceedings in this case. The "extradition hearing" conducted here by Governor Ray of Iowa amounted to nothing less than a direct attack on the quality of justice administered by the courts of the Commonwealth of Puerto Rico. Such an attack is an insult to the integrity of Puerto Rico, and invites precisely the sort of interstate friction and retaliation which the Extradition Clause was intended to avoid.

The sole focus of the hearing conducted by the Iowa Governor's employee in this case was the quality of justice afforded by Puerto Rico's judiciary. Hearsay testimony elicited from the fugitive, his companion and his lawyers, grounded in plain self-interest and smacking of racism, attacked the ability of Puerto Rico's courts to impanel impartial juries, protect crimi-

nal defendants, and guard against perjured testimony. The subject of the hearing was not, as in *Michigan* v. *Doran*, the "niceties" of an underlying probable cause determination, but the very ability of the courts of Puerto Rico to try a "white American man" fairly. *See* Statement of the Case, *supra* at pp. 6-8.

Such a procedure violates the most basic precepts of a federal system, and destroys the very "harmony and welfare of the States," *Appleyard* v. *Massachusetts*, 203 U.S. at 228, that the Extradition Clause was intended to promote. If one state can be denied its right to extradition based on a valid request, then it will hardly be surprising if that state denies a similar request when the tables are turned. If one state is free to second-guess another, the other is free to retaliate.

The mandatory command of the Extradition Clause was intended to prevent just such balkanization and interstate friction. *Appleyard* v. *Massachusetts*, 203 U.S. at 228; *Biddinger* v. *Commissioner of Police*, 245 U.S. at 132-33. The Extradition Clause, like the Full Faith and Credit Clause and the interstate Privileges and Immunities Clause, which both also appear in Article IV, and like the interstate Commerce Clause, was part of the Framers' efforts "to help fuse into one nation a collection of independent, sovereign states." *Toomer* v. *Witsell*, 334 U.S. 385, 395 (1948). "The Extradition Clause, like the Commerce Clause, served important national objectives of a newly developing country striving to foster national unity." *Michigan* v. *Doran*, 439 U.S. at 288. The Constitution was "framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin* v. *G.A.F. Seelig*, 294 U.S. 511, 523 (1935). "In the administration of justice, no less than in trade and commerce, national unity was thought to be served by de-emphasizing state lines for certain purposes, without impinging on essential state autonomy." *Michigan* v. *Doran*, 439 U.S. at 288.

Extradition is the sole context in which a decision of this Court has licensed the states to treat each other as hostile foreign sovereigns, in violation of the system of cooperative federalism the Constitution thus commanded. This Court has enforced the requirements of full faith and credit to other state's statutes and judgments, *see, e.g., Milwaukee County* v. *White Co.*, 296 U.S. 268, 275-77 (1935),[13] prohibited interstate discrimination in taxation and the regulation of commerce, *see, e.g., H.P. Hood & Sons, Inc.* v. *Dumond*, 336 U.S. 525, 538-39 (1949); *Philadelphia* v. *New Jersey*, 437 U.S. 617, 624 (1978), and precluded states from denying to those from other states the privileges and immunities of citizenship, *see, e.g., Supreme Court of New Hampshire* v. *Piper*, 105 S.Ct. 1272 (1985); *United Building and Construction Trades* v. *City of Camden*, 104 S.Ct. 1020 (1984); *Austin* v. *New Hampshire*, 420 U.S. 656, 660 (1975).[14] *Kentucky* v. *Dennison* invites states who must be at peace over every other aspect of their governance to fight a war of all against all when it comes to extradition.

States have all too often accepted that invitation. Far from being an occasion for "harmony" among the states, extradition requests have all too often, as here, led to discord in interstate relations, retaliation between states, and animosity between their governors.[15] In some, but by no means all of these cases,

---

[13] The decisions of the Puerto Rico courts are entitled to full faith and credit just as those of a state's courts are. *See, e.g., Americana of Puerto Rico, Inc.* v. *Kaplus*, 368 F.2d 431 (3d Cir. 1966), *cert. denied*, 386 U.S. 943 (1967).

[14] The Privileges and Immunities Clause is applied to Puerto Rico as if it were a state by the Federal Relations Act, 48 U.S.C. § 737; *see, e.g., Silver* v. *Garcia*, 760 F.2d 33, 36 (1st Cir. 1985).

[15] For example, the refusal by the Governor of New York of a request to extradite a fugitive from Georgia led to a public dispute in which Georgia Governor Richard B. Russell denounced the action as a "deliberate and wanton insult." *See* New York Times, Dec. 23, 1932, p. 7, cols. 1-2; Dec. 28, 1932, p. 36, col. 4. The Governor of New York, attacked as well by Georgia's Con-

the Governor's refusal to extradite may have reflected his fear that the demanding state might violate the civil rights of the fugitive, either because of the absence of procedural protections of due process or, as in *Dennison* itself, because of the nature of its substantive law.[16] Whatever the merit of such explanations in their historical context, they can no longer support the wholesale assault on comity which *Dennison* invites and which the Governor of Iowa in this case perpetrated.

As to procedural protections, the application of the fundamental guarantees of due process to the states ensures defendants in every state the right to a speedy and fair trial by a jury of his peers, with the assistance of counsel and the protections of the fourth, fifth, and sixth amendments. *See, e.g., Mapp* v. *Ohio*, 367 U.S. 643 (1961); *Gideon* v. *Wainwright*, 372 U.S. 335 (1963); *Malloy* v. *Hogan*, 378 U.S. 1 (1964); *Duncan* v. *Louisiana*, 391 U.S. 145 (1968). And federal law now provides both civil and criminal liability for violations of civil

---

gressmen, responded by pointing to prior refusals to extradite by other governors, including Russell himself. *Id.* In another request from Georgia, Massachusetts Governor Hurley's refusal to extradite led to a long-standing personal feud with Georgia Governor Rivers, who retaliated by paroling a prisoner on the condition that the prisoner go directly to Massachusetts. *See* New York Times, Sept. 2, 1937, p. 8, cols. 4-5; Sept. 3, 1937, p. 6, col. 6. *See generally* Note, *Interstate Rendition: Executive Practices and the Effects of Discretion*, 66 Yale L. J. 97, 110-111 & n.74 (1956). For a more recent example of the controversy and friction produced by a Governor's refusal to extradite, *see South Dakota* v. *Brown*, 576 P.2d 473, 483 (Cal. 1978) (Mosk, J., dissenting) (calling California Governor Jerry Brown's refusal to extradite radical native American activist Dennis Banks, convicted in South Dakota of riot and assault with a deadly weapon, "a contemptuous rebuff to the administration of justice in a sister state and a blow to cooperative law enforcement among states.").

[16] *Dennison* itself involved a refusal by a free state to extradite a fugitive to a slave state. In *Dennison*, Ohio, the asylum state, had not claimed a right to total discretion to refuse to extradite, but only the authority to refuse to extradite where the offense charged in the demanding state was not an offense under the law of the asylum state. *See* 65 U.S. (24 How.) at 69 (opinion of Ohio Attorney General).

rights by state officials. *See, e.g., Screws* v. *United States*, 325 U.S. 91 (1945); *Monroe* v. *Pape*, 365 U.S. 167 (1961); *Monell* v. *Department of Social Services*, 436 U.S. 658 (1978). *See generally* Murphy, Revising Domestic Extradition Law, 131 U. Penn. L. Rev. 1063, 1074-76 (1983) (arguing that to the extent governors' refusals to extradite were intended to protect civil rights, that need has been substantially reduced by the emergence of new legal doctrines applicable in every state).

There has been no claim here, nor could there be, that these federal constitutional protections do not bind the courts of Puerto Rico. The criminal due process rights of all persons in Puerto Rico are protected by the Federal Constitution to the same extent as in any state of the Union. *See Rodriguez* v. *Popular Democratic Party*, 457 U.S. 1, 7-8 (1982) (due process and equal protection as well as all other fundamental guarantees of the United States Constitution apply to Puerto Rico); *Torres* v. *Puerto Rico*, 442 U.S. 465, 469-71 (1979) (due process, equal protection and the constitutional requirements of the fourth amendment apply to the Commonwealth of Puerto Rico).[17] Moreover, the Bill of Rights of the Commonwealth Constitution, adopted by the people of Puerto Rico in 1952 and approved by Congress, 66 Stat. 327, 48 U.S.C. § 731(c), incorporates all of the guarantees included in the Bill of Rights of the Federal Constitution that are applicable to states.[18]

---

[17] Puerto Rico is also a state for the purposes of 42 U.S.C. § 1983, and the United States District Court for the District of Puerto Rico has jurisdiction under 28 U.S.C. § 1343(3) to redress the deprivation of rights secured by the Federal Constitution or federal civil rights statutes. *Examining Board* v. *Flores de Otero*, 426 U.S. 572, 580-97 (1976).

[18] *See* Constitution of the Commonwealth of Puerto Rico, Art. II, sections 1-20, L.P.R.A. vol. 1 (1982). The only exception to full incorporation is trial by jury for misdemeanors; and even as to this exception, the Puerto Rico Rules

As to substantive criminal law, the Constitution likewise imposes on each state — and on the Commonwealth of Puerto Rico — some basic federal standards for the imposition of punishment. *See, e.g., Robinson* v. *California*, 370 U.S. 660 (1962); *Solem* v. *Helm*, 463 U.S. 277 (1983). And the controversy that gave rise to *Kentucky* v. *Dennison* — the deep division among the states over the issue of slavery — has been resolved for all states by the adoption of the thirteenth and fourteenth amendments to the Constitution.

There has never been any claim by Iowa in this case, nor could there be, that Puerto Rico's criminalization of murder and attempted murder in any sense differs from the substantive criminal law of Iowa. Murder and attempted murder do not involve any activity as to which there are deep and fundamental differences between Iowa and Puerto Rico: murder and attempted murder are universally condemned as crimes. The only substantive difference revealed by the facts of this case, if it can even be termed that, relates to nothing more than a dispute over the timing of plea negotiations that might reduce the charge of murder to manslaughter or vehicular homicide —

---

of Criminal Procedure provide for jury trial not only in felony cases but also in serious misdemeanor cases where a sentence of 6 months or more may be imposed, as required by this Court for state criminal trials, *see Duncan* v. *Louisiana*, 391 U.S. 145 (1948); *Baldwin* v. *New York* 399 U.S. 66 (1970); *Apodaca* v. *Oregon*, 406 U.S. 404 (1972). *See* 34 L.P.R.A. App. II R. 111. The substantive and procedural criminal laws of Puerto Rico are similar to those existing in most of the states of the Union. See Puerto Rico Penal Code of 1975, 33 L.P.R.A. 3021 to 4628 (1983) and Puerto Rico Rules of Criminal Procedure, 34 L.P.R.A. App. II, R. 1 to 254 (1971). Puerto Rico's judicial system has been described as "an example to be emulated and a model to be followed." Clark and Rogers, *The New Judiciary Act of Puerto Rico: A Definitive Court Reorganization*, 61 Yale L.J. 1147 (1952). *See also* Trias Monge, El Sistema Judicial de Puerto Rico 112-234 (1978); Negron Garcia, *Puerto Rico Updates its Courts*, 58 J. Am. Jud. Soc. 350 (1975).

precisely the sort of issue as to which a demanding state is entitled to deference and respect.[19]

Rather, the only claim here is that of Mr. Calder and his witnesses that the courts of Puerto Rico cannot be trusted to enforce fairly their own laws and to protect his constitutional rights. It is nothing more or less than an attack on the integrity of Puerto Rico's courts. Such an attack is a blatant violation of the Extradition Clause, and of "our constitutional system of cooperative federalism," *Nevada* v. *Hall*, 440 U.S. 410, 424 n.24 (1979).

If Ronald Calder has any defenses to offer, he can present them and litigate them in the courts of the Commonwealth of Puerto Rico, fully protected by the guarantees of the United States Constitution. *See Stone* v. *Powell*, 428 U.S. at 493-94 n.35. And if Ronald Calder wishes to engage in plea negotiations, he should do so with the prosecutors of Puerto Rico according to the Commonwealth's procedures. "[I]n delivering up an accused person to the authorities of a sister State they [the officials of the asylum state] are not sending him for trial to an

---

[19] If a case should ever arise in which a demanding state and an asylum state were to differ over their substantive criminal law in the way that Ohio and Kentucky did in *Dennison*, then far less drastic and less offensive means than the wholesale discretion afforded by *Kentucky* v. *Dennison* might be devised to resolve them. In enforcing the Full Faith and Credit Clause, for example, this Court has held in limited circumstances that a state need not apply the statutory law of another state where to do so would be "obnoxious" to substantial substantive policies of the forum state. *See Pacific Employees Insurance Co.* v. *Industrial Accident Comm'n*, 306 U.S. 493, 502-04 (1939); *Nevada* v. *Hall*, 440 U.S. 410, 422-24 (1979). It is far from clear, however, that even in a case of genuine differences over substantive law, an exception like that carved out in the full faith and credit context should apply in the extradition context. As the Court was careful to point out in *Nevada* v. *Hall*, the mandatory command of the Extradition Clause places a "specific limitation" on the freedom of the states to treat each other as "unfriendly sovereigns." *Id.* at 425 ("Nor are the States free to deny extradition of a fugitive when a proper demand is made by the executive of another state.").

alien jurisdiction, with laws which our standards might condemn, but are simply returning him to be tried, still under the protection of the Federal Constitution but in the manner provided by the State against the laws of which it is charged he has offended." *Biddinger* v. *Commissioner of Police*, 245 U.S. at 133. As the Court of Appeals recognized in this case, the Governor of Iowa, in refusing extradition of Ronald Calder, was "sitting in judgment of Puerto Rico's actions . . . [and] accusing Puerto Rico of having a sub-standard system of criminal justice." Pet. App. A7 n.7. *Kentucky* v. *Dennison*, which invites precisely such accusations and then immunizes them from review or remedy, should be overruled.

III. *KENTUCKY* v. *DENNISON* SHOULD BE OVERRULED BECAUSE IT CONFINES FEDERAL JUDICIAL POWER WITHIN LIMITS LONG ABANDONED BY THIS COURT.

Kentucky v. *Dennison* ultimately held, as noted above, that although a state governor's duty to extradite is mandatory and merely ministerial, the federal government cannot compel him to perform it. This holding viewed federal power over the states and state officials as exceedingly limited. But as this Court has explicitly recognized, *Dennison*'s view of the limits of federal power is a "19th-century view." *FERC* v. *Mississippi*, 456 U.S. 742, 761 (1982). And as this Court has likewise acknowledged, the "language and analysis of the *Dennison* case of the preceding century" has been "clearly cut back," to the point where it "is not representative of the law today." *Id.* at 762-63. Indeed, the 20th-century decisions of this court have thoroughly repudiated that 19th-century view, leaving *Kentucky* v. *Dennison* to stand as a lone historical relic.

Chief Justice Taney's ruling in *Dennison* was grounded in a now antiquated theory of dual federalism that viewed states and state officials as generally enjoying significant immunity from federal governmental power. But Taney's declaration of federal judicial impotence in relation to the states had special poignancy in the particular circumstances under which *Kentucky* v. *Dennison* was decided — namely, the secession of the Southern states from the Union on the eve of the Civil War.

The fugitive in *Dennison*, Willie Lago, was wanted in Kentucky for aiding a slave in escaping from her owner. Dennison, the Governor of Ohio, a free state, refused to extradite him. An original action was brought in the United States Supreme Court. At the time the case was argued, February 1861, "the states of the Deep South had already proclaimed their secession from the Union, their representatives in Congress had said their farewells, and other states and representatives were about to go." C. Swisher, *History of the Supreme Court of the United States, Vol. V: The Taney Period (1863-64)*, at 688 (1974). At that troubled moment in our nation's history, a federal judicial order to the governor of Ohio to return Lago to Kentucky would have been at best an idle gesture; at worst, fuel for further divisiveness. As one noted commentary has observed, there was at that moment quite clearly "an element of unrealism in considering coercion of the states, or of their governors, by the hands of the federal judiciary." *Id.*

In light of Taney's powerful and well-documented conclusion in *Dennison* that the Ohio governor was flagrantly violating his constitutional duty, the denial of relief in the final pages of the *Dennison* opinion is perhaps best understood as a device for averting a showdown and preserving legitimacy for the Court in a moment of extreme national crisis. *See, e.g.*, B. Currie, *The Constitution in the Supreme Court: The First Hundred Years, 1789-1888*, at 247 n.70 (1985) (arguing that in *Dennison*, the Court was "lying low" after the debacle of its

earlier activism in *Dred Scott* v. *Sandford*). The ground asserted for that denial of relief, however, was an extreme view of the limits of federal power with respect to the states that has no contemporary analogue in any other decision of this Court: "[T]he Federal Government, under the Constitution," Taney wrote, "has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it; for if it possessed this power it might overload the officer with duties which would fill up all his time, and disable him from performing his obligations to the State, and might impose on him duties of a character incompatible with the rank and dignity to which he was elevated by the State." 65 U.S. at 107-08.

Chief Justice Taney's view of federal power has been thoroughly rejected by this Court throughout this century. *First*, the insistence that states must in all circumstances be viewed as coequal sovereigns with the federal government — the "dual federalism" approach that characterized the Taney Court's approach in *Dennison*, as in *Dred Scott* v. *Sandford*, 60 U.S. (19 How.) 393 (1857), and *New York* v. *Miln*, 36 U.S. (11 Pet.) 102 (1837) — was firmly laid to rest by the decisions of this Court upholding congressional legislation enacted during the New Deal. *See, e.g., Wickard* v. *Filburn*, 317 U.S. 111 (1942); *United States* v. *Darby*, 312 U.S. 100 (1941); *Steward Machine Co.* v. *Davis*, 301 U.S. 548 (1937); *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

Second, ever since this Court's decision in *Ex Parte Young*, 209 U.S. 123, 159-60 (1908), the federal courts have assumed the obligation and the responsibility to order state officials to comply with the mandates of the Constitution. In rejecting the claim of the state attorney general to eleventh amendment immunity in *Ex Parte Young*, the Court held that sovereign immunity could not be invoked to shield unconstitutional state action from federal judicial scrutiny: "[The] use of the name

of the State to enforce an unconstitutional act . . . is a proceeding without . . . authority . . . which does not affect the State in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting to use the name of the State to enforce a legislative enactment which is void because unconstitutional." *Id.* at 159.

In the decades since *Ex Parte Young*, this Court has, time and time again, upheld the authority of federal courts to order local officials to comply with the Constitution, notwithstanding local opposition. *See, e.g., Brown* v. *Board of Education I*, 347 U.S. 483 (1954); *Brown* v. *Board of Education II*, 349 U.S. 294 (1955); *Cooper* v. *Aaron*, 358 U.S. 1 (1958). Claims that such decisions excessively burden the exercise of local functions have been rejected. The Court has repeatedly reaffirmed that federal courts may, if necessary, require local officials "to exercise the power that is theirs to levy taxes to raise funds" adequate to remedy constitutional violations. *Griffin* v. *County School Board*, 377 U.S. 218, 233 (1964); *see Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Milliken* v. *Bradley II*, 433 U.S. 267 (1977). It has directed federal courts to order local officials to reorganize state legislative bodies, *see Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Toombs* v. *Fortson*, 241 F.Supp. 65 (N.D. Ga.) (per curiam), *aff'd mem.*, 384 U.S. 210 (1966), and restructure local governmental units, *Hadley* v. *Junior College District*, 397 U.S. 50 (1970), to meet constitutional requirements. In each of these areas, the Court has plainly done precisely what Chief Justice Taney wrote in *Dennison* was beyond the federal government's power: it has ordered state officers to conduct their business and perform their duties consistent with the federal Constitution.

Third, this Court has rejected more recent claims that states enjoy some special immunity to even valid exercises of federal power inherent in the structure of the Constitution and the

rights reserved under the Tenth Amendment. To be sure, such claims did have brief ascendancy before this Court. *See National League of Cities* v. *Usery*, 426 U.S. 833 (1976). But even during that period the Court limited such claims to a narrow sphere of "traditional governmental functions," and continued to uphold even some federal statutes that ordered state officials to consider federal standards and to follow federally imposed procedures, as did the utility regulation act upheld in *FERC* v. *Mississippi*, 456 U.S. 742 (1982).[20]

Such claims were in any event rejected altogether in *Garcia* v. *San Antonio Metropolitan Transit Authority*, 105 S.Ct. 1005 (1985). In that case, this Court overruled *National League of Cities* and rejected specifically the claim of a local transit authority to immunity from federally imposed minimum wage and pay provisions. In the process, this Court not only overruled prior efforts to limit federal power under the Commerce Clause by isolating the "traditional governmental functions" of states, but also concluded that the structure of the federal government itself was the means chosen by the Framers to secure the role of states. *Id.* at 1016-20. That conclusion repudiated the very rationale for *Dennison* — the fear that absent the restraints of dual federalism, federal power might be used to "overload" the state officer with duties, to "disable him from performing his obligations," to impose duties beneath his "rank and dignity," 65 U.S. at 107-08. This Court has

---

[20] The state's argument in *FERC* relied explicitly on Chief Justice Taney's language in *Kentucky* v. *Dennison*. Characterizing that approach as a "rigid and isolated statement" from a "well-known slavery case" which "is not representative of the law today," the Court emphasized the many instances "where the Court has upheld federal statutory structures that in effect directed state decisionmakers to take or to refrain from taking certain actions." 456 U.S. at 762, citing *Fry* v. *United States*, 421 U.S. 542 (1975); *Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U.S. 658 (1979); *Testa* v. *Katt*, 330 U.S. 386, 393 (1947).

recognized instead that state sovereign interests "are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." 105 S.Ct. at 1018.

What Puerto Rico seeks to uphold in this case is if anything a more modest proposition about federal power than those this Court has already accepted in cases like *Brown* v. *Board* and *Garcia*. For ordering a state governor to perform the "ministerial" duty of extraditing a fugitive involves no interference with detailed matters of discretionary state policy, as might a court order that state officials restructure their schools or electoral districts, or a federal statute telling states what to pay their employees or how to regulate their utilities.[21]

Nor is ordering a state governor to extradite merely a reinforcement of the supremacy of federal *statute;* it is a mandate squarely drawn from the plainest text of the Constitution itself. Thus however the limits that state sovereignty imposes on Congressional power are ultimately defined, *see Garcia* v. *San Antonio Metropolitan Transit Authority,* 105 S.Ct. at 1015-20; *id.* at 1038 (O'Connor, J., dissenting), they must surely permit, and indeed require, the exercise of federal power to compel extradition. For far from intruding on any state sovereignty arguably protected by the tenth amendment, federal power here is essential to ensure obedience to mandatory commands of the Constitution that are intended to protect the sovereignty of each state, and the ability of each to bring to trial those who violate its criminal laws.

The constitutional duty of the governor of Iowa to deliver Ronald Calder up to the Commonwealth of Puerto Rico is

---

[21] *Cf. Marbury* v. *Madison,* 5 U.S. (1 Cranch) 137, 166-68 (1803) (dictum) (noting that issuance of a writ of mandamus ordering a federal executive officer to perform the ministerial duty of delivering a commission was not foreclosed to a federal court as a "political" matter).

absolute and unconditional. The Extradition Clause and his solemn oath to uphold the Constitution require him to fulfill that duty. His refusal "flies in the face of the fact that States of the Union constitute a Nation," and "disregards the purpose and effect of Article VI of the Constitution." *Testa* v. *Katt*, 388 U.S. 386, 389 (1947). The holding in *Dennison* that no federal power exists to compel the governor of Iowa to obey that duty not only is contrary to the Supremacy Clause, but in effect reads the Extradition Clause right out of the Constitution. Such self-imposed judicial impotence is irreconcilable with our constitutional structure.

CONCLUSION

Dennison shields every refusal to extradite from judicial scrutiny — no matter how arbitrary, how insulting to a state's intregrity, how offensive to norms of comity, or how racist that refusal may be. It precludes the federal courts, and this Court, from serving as the needed referee in such disputes between the states, and from ensuring that the Framers' purpose in including the Extradition Clause — that no state become an asylum for fugitives from justice — is served. Until *Dennison* is overruled, Ronald Calder, properly charged with murder five years ago, can refuse to answer those charges with impunity, having found an asylum in Iowa, and there is absolutely nothing that Puerto Rico can do to bring him to trial.

The court of appeals affirmed the denial of mandamus relief below with the greatest reluctance. Speaking for a unanimous court, Judge Timbers wrote:

> Despite our firm belief in the proper role of the inferior federal courts in adhering to and not seeking to avoid controlling Supreme Court precedent, we cannot empha-

> size too strongly our deep conviction that the underpinnings of *Dennison* during the past 125 years have been so seriously undermined — especially in view of the mandatory provision of the extradition clause of the Constitution — as to suggest reconsideration by the only Court empowered to do so. Perhaps the extradition principles articulated in *Dennison* are in that category so aptly described by Judge Cardozo as being infused with "the doubts and misgivings, the hopes and fears, [all] part of the travail of mind, the pangs of death and the pangs of birth, in which principles that have served their day expire, and new principles are born."

Pet. App. A10. Petitioner Commonwealth of Puerto Rico respectfully urges this Court, "the only Court empowered to do so," to overrule *Kentucky* v. *Dennison*, and to reverse the judgment below in order that the governor of Iowa may be compelled to perform his plain constitutional duty.

Respectfully submitted,

HECTOR RIVERA CRUZ
Secretary of Justice Commonwealth
of Puerto Rico

RAFAEL ORTIZ CARRION
Solicitor General
Commonwealth of Puerto Rico

LINO J. SALDANA
(Counsel of Record)
SALDANA, REY, MORAN & ALVARADO
P.O. Box 13954
Santurce, Puerto Rico 00908
(809) 721-6345

SUSAN ESTRICH
TUTTLE & TAYLOR, INC.
355 South Grand Avenue
Los Angeles, California 90071-3101
(213) 683-0681

KATHLEEN M. SULLIVAN
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-4633

Attorneys for Petitioner

November 20, 1986

Supreme Court, U.S.
FILED
JAN 26 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-2116

In The
Supreme Court of the United States
October Term, 1986

COMMONWEALTH OF PUERTO RICO,
Petitioner,

v.

TERRY E. BRANSTAD and the STATE OF IOWA,
RONALD CALDER, Intervenor,
Respondents.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT BRIEF OF THE RESPONDENTS

THOMAS J. MILLER
Attorney General of Iowa
*BRENT R. APPEL
DICKINSON, THROCKMORTON,
PARKER, MANNHEIMER & RAIFE
1600 Hub Tower
Des Moines, Iowa 50309
(515) 244-2600
ROXANN RYAN
PAMELA GREENMAN DAHL
Assistant Attorneys General
Hoover Building
State Capitol
Des Moines, Iowa 50309
Attorneys for the Honorable Terry E. Branstad and the State of Iowa, Respondents
WILLIAM L. KUTMUS
620 Fleming Building
Des Moines, Iowa 50309
(515) 288-3339
Attorney for Intervenor Ronald Calder, Respondent

*Counsel of Record

BEST AVAILABLE COPY

COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the well-established and uncontroversial rule in *Kentucky v. Dennison*, 65 U.S. (24 How.) 66 (1861), which precludes a federal court from issuing a writ of mandamus to compel a governor of a sovereign state to extradite a citizen to another sovereign state pursuant to Article IV, section 2 of the Constitution, should be overruled at the request of the Commonwealth of Puerto Rico, a territory of the United States.

TABLE OF CONTENTS

Page

COUNTERSTATEMENT OF QUESTION PRESENTED i

TABLE OF AUTHORITIES iv

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 4

ARGUMENT 5

I. THE TRADITIONAL REFUSAL OF FEDERAL COURTS TO INTERVENE IN EXTRADITION DISPUTES IS SOUNDLY BASED ON JUDICIAL RESPECT FOR SOVEREIGN STATES AND THEIR POPULARLY ELECTED CHIEF EXECUTIVES IN CRIMINAL JUSTICE MATTERS AND UPON RECOGNITION OF THE PRIMARY ROLE OF CONGRESS IN RESOLVING DIFFICULTIES IN INTERSTATE RELATIONS 5

A. Nonintervention By Federal Courts In Extradition Matters Is Supported By Judicial Respect For The Political Branches Of Government In Questions Of Whether To Subject Individual Citizens To Criminal Proceedings 7

B. Notions Of Federalism Reinforce Federal Judicial Reluctance To Interfere In Criminal Justice Disputes Between Sovereign States 11

C. Congress Is The Appropriate Forum To Develop Remedies To Enforce The Extradition Clause Snould Self-enforcement Prove Inadequate 12

1. The practical realities of the extradition process provide a check on executive refusal to extradite fugitives 13

TABLE OF CONTENTS—Continued

Page

2. Effective federal enforcement of the Extradition Clause may be obtained through action of the legislative and executive branches of the federal government without requiring a confrontation between the federal judiciary and a state governor 14

II. BECAUSE PUERTO RICO IS NOT A SOVEREIGN STATE, IT MAY NOT SEEK TO USE THE EXTRADITION CLAUSE AS A SWORD TO ENLIST THE AID OF THE FEDERAL JUDICIARY IN AN UNPRECEDENTED FEDERAL JUDICIAL EFFORT TO COERCE THE POLITICALLY RESPONSIVE BRANCHES OF STATE GOVERNMENT TO EXTRADITE A FUGITIVE 18

CONCLUSION 23

TABLE OF AUTHORITIES

Page(s)

CASES

Balzac v. Porto Rico, 258 U.S. 298 (1922) 22

Commonwealth of Puerto Rico v. Branstad, 787 F.2d 423 (1986) 3

Commonwealth v. Superintendent of County Prison, 152 Pa. Super. 167, 31 A.2d 576 (1943) 9

Examining Board of Engineers v. Flores de Otero, 426 U.S. 572 (1976) 20, 21

Fenner v. Boykin, 271 U.S. 240 (1926) 12

Fornaris v. Ridge Tool Co., 400 U.S. 41 (1970) 20

Garcia v. San Antonio Metropolitan Transit Authority, — U.S. —, 105 S.Ct. 1005 (1985) 17

Harris v. Rosario, 446 U.S. 643 (1980) 22

Hemans v. United States, 163 F.2d 228 (6th Cir. 1947) 15

Huffman v. Pursue, Ltd., 420 U.S. 592 (1975) 12

Illinois v. Gates, 462 U.S. 213 (1983) 19

Imbler v. Pachtman, 424 U.S. 409 (1976) 8

Kelly v. Robinson, 55 U.S.L.W. 4011 (U.S. Nov. 12, 1976) 12

Kentucky v. Dennison, 65 U.S. (24 How.) 66 (1861) 3, 4, 5, 6, 8, 14

Kopel v. Bingham, 211 U.S. 468 (1909) 20, 21

Mullaney v. Anderson, 342 U.S. 415 (1952) 22

New York v. O'Neil, 359 U.S. 1 (1958) 13

Ohio Civil Rights Commission v. Dayton Schools, 477 U.S. —, 106 S.Ct. 2718, 91 L.Ed.2d 512 (1985) 12

People ex rel. Abeles v. Elrod, 27 Ill.App.3d 155, 326 N.E.2d 443 (1975) 6

TABLE OF AUTHORITIES—Continued

Page(s)

CASES

Puerto Rico v. Iowa, — U.S. — (1984), 52 U.S.L.W. 3509 (Jan. 9, 1984) 3

Rizzo v. Goode, 423 U.S. 362 (1976) 12

Solesbee v. Balkcom, 339 U.S. 9 (1950) 8

South Dakota v. Brown, 576 P.2d 473 (1978) 6, 10, 13

State v. Coughlin, 90 Wash.2d 835, 556 P.2d 1145 (1978) 6

Taylor v. State, 405 So.2d 55 (Ala. Cr. App. 1981) 6

Taylor v. Taintor, 83 U.S. (16 Wall.) 366 (1873) 6

Torres v. Comm. of Puerto Rico, 442 U.S. 656 (1979) 22

Ullman v. United States, 350 U.S. 422 (1956) 8

United States v. Brandenburg, 144 F.2d 656 (3rd Cir. 1944) 15

United States v. Thurman, 687 F.2d 11 (3rd Cir. 1982) 15

Younger v. Harris, 401 U.S. 37 (1971) 11, 12

STATUTES

18 U.S.C. § 111 10

18 U.S.C. § 152 10

18 U.S.C. § 201 10

18 U.S.C. § 1073 ..... 2, 5, 15, 16

18 U.S.C. § 3182 2

TABLE OF AUTHORITIES CITED—Continued

Page(s)

UNITED STATES CONSTITUTION

Article III, sec. 2 3

Article IV, sec. 2, cl. 2 ..... *passim*

Article IV, sec. 3, cl. 1 21

Article IV, sec. 3, cl. 2 ..... 19, 20

OTHER AUTHORITIES

J. Choper, *Judicial Review and the National Political Process* (1980) 8, 14, 18

Comment, *Interstate Extradition: Should the Asylum State Have Unbridled Discretion,* 1980 Brigham Young Univ. L.Rev. 376 6

Comment, *Interstate Rendition: Executive Practices and the Effects of Discretion,* 66 Yale L. J. 97 (1956) 6, 13

O. Holmes, *The Common Law* (1963) 9

Murphy, *Revising Domestic Extradition Law,* 131 U. Pa. L.Rev. 1063 (1983) 9, 10

United States Attorneys' Manual, Section 9-69.410 (August 1, 1985) 16

No. 85-2116

In The

Supreme Court of the United States

October Term, 1986

COMMONWEALTH OF PUERTO RICO,
Petitioner,

v.

TERRY E. BRANSTAD and the STATE OF IOWA,
RONALD CALDER, Intervenor,
Respondents.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT BRIEF OF THE RESPONDENTS

The respondents offer this joint brief urging affirmance of the decision of the Court of Appeals in this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, section 2, cl. 2 of the Constitution of the United States, the Extradition Clause, provides that:

> A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the Executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction over the Crime.

The Fugitive Felon Act, 18 U.S.C. § 1073, provides:

> Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, . . . under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, . . . which is a felony under the laws of the place from which the fugitive flees, . . . shall be fined not more than $5,000 or imprisoned not more than five years, or both.
>
> Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, . . . and only upon formal approval in writing by the Attorney General or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated.

The Extradition Act of 1793, 18 U.S.C. § 3182, provides:

> Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which the person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

STATEMENT OF THE CASE

The Commonwealth of Puerto Rico seeks to conscript the federal courts in its political battle with two governors of Iowa over the extradition of Ronald Calder. Puerto Rican authorities charged Calder with murder and attempted murder in connection with an automobile accident which occurred in Aguadilla in January 1981. Two consecutive Iowa governors declined to extradite Calder to Puerto Rico to face the charges.

In 1983, Puerto Rico sought leave to file an original complaint with this Court. In support of its jurisdictional argument, the Commonwealth relied on *Kentucky v. Dennison*, 65 U.S. (24 How.) 66 (1861). In *Dennison*, this Court exercised its original jurisdiction to decide an extradition controversy between Kentucky and Ohio. The State of Iowa resisted, arguing *inter alia* that because the Commonwealth of Puerto Rico was a territory, it could not invoke this Court's original jurisdiction as a "controversy between two or more states." Article III, section 2. This Court denied leave to file the complaint. *Puerto Rico v. Iowa*, — U.S. — (1984), 52 U.S.L.W. 3509 (Jan. 9, 1984).

Puerto Rico then filed this action in Federal District Court for the Southern District of Iowa seeking a writ of mandamus to compel the Governor of Iowa, The Honorable Terry E. Branstad, to extradite Calder. Relying on *Kentucky v. Dennison*, 65 U.S. (24 How.) 66 (1861), the District Court dismissed the action. The United States Court of Appeals for the Eighth Circuit affirmed. *Commonwealth of Puerto Rico v. Branstad*, 787 F.2d 423 (8th Cir. 1986). Puerto Rico filed the instant

petition and this Court granted certiorari. 55 U.S.L.W. 3199 (Oct. 7, 1986).

SUMMARY OF ARGUMENT

In *Kentucky v. Dennison*, this Court held that a federal court could not issue a writ of mandamus compelling a state governor to extradite a fugitive to a sister state under the Extradition Clause of the Constitution. U.S. Const., Art. IV, sec. 2, cl. 2. While sweeping statements in *Dennison* to the effect that federal courts lacked the power to issue writs of mandamus compelling state officials to comply with federal law may appear overbroad today, the narrow holding in *Kentucky v. Dennison* in the unique constitutional context of the Extradition Clause remains sound.

The notion that the federal judiciary should decline to thrust itself into extradition disputes between sovereign states is supported by three related concepts. First, federal judicial review of a decision by a state governor not to force a citizen to face criminal proceedings in a sister state would be an unwarranted intrusion into the political process by the most nonpolitical branch of government. Second, federal judicial review of extradition decisions by state governors would offend notions of federalism and comity that are designed to ensure a smooth working relationship between the state and federal governments. Finally, federal judicial review of extradition decisions by state governors is improper and entirely unnecessary because the Congress is the appropriate body to develop mechanisms, if needed, to enforce the Extradition Clause.

The congressional power to enforce the Extradition Clause has not been dormant. Congress has exercised its enforcement powers through the Fugitive Felon Act, 18 U.S.C. § 1073, a narrowly crafted statute. Unhappy with the limited willingness of Congress and the federal executive branch to intervene in extradition matters, Puerto Rico seeks to expand federal involvement by asking this Court to abandon two centuries of judicial restraint in the extradition area. Such judicial activism is entirely unwarranted, particularly in light of the refusal of the political branches of the federal government to intervene aggressively through the federal criminal justice process in extradition disputes between states.

In the alternative, judicial determination of the role of federal courts in extradition matters is not required under the facts of this case. Puerto Rico is not a "state" under the Extradition Clause. As a result, even if this Court were inclined to reconsider *Kentucky v. Dennison*, it should not do so at the request of an entity that is not entitled to invoke the constitutional provision.

ARGUMENT

I. THE TRADITIONAL REFUSAL OF FEDERAL COURTS TO INTERVENE IN EXTRADITION DISPUTES IS SOUNDLY BASED ON JUDICIAL RESPECT FOR SOVEREIGN STATES AND THEIR POPULARLY ELECTED CHIEF EXECUTIVES IN CRIMINAL JUSTICE MATTERS AND UPON RECOGNITION OF THE PRIMARY ROLE OF CONGRESS IN RESOLVING DIFFICULTIES IN INTERSTATE RELATIONS.

The holding in *Kentucky v. Dennison*, if not its rationale, enjoys broad support in state and federal courts

and among the commentators.[1] The widespread acceptance of *Dennison* suggests that its principle of judicial restraint is not a "lone historical relic" to be tossed aside like poor Yorick's skull,[2] but rather is an established and deeply engrained part of our constitutional tradition.[3]

Generally, the presence of consensus around a legal principle is not the result of blind acceptance of tradition but rather a recognition of the validity of the policy rationale for the rule of law. In the context of *Dennison*, the holding has important policy underpinnings.[4] First, the judiciary has generally declined to second guess execu-

---

[1] *See, e.g., Taylor v. Taintor*, 83 U.S. (16 Wall.) 366, 374 (1873); *Taylor v. State*, 405 So.2d 55, 55 (Ala. Cr. App. 1981); *South Dakota v. Brown*, 144 Cal.Rptr. 758, 576 P.2d 736, 476 (1978); *State v. Coughlin*, 90 Wash.2d 835, 838, 556 P.2d 1145, 1147 (1978); *People ex rel. Abeles v. Elrod*, 27 Ill.App.3d 155, 326 N.E.2d 443, 496 (1975). *See also* Comment, *Interstate Extradition: Should the Asylum State Have Unbridled Discretion*, 1980 Brigham Young Univ. L. Rev. 376, 392; Comment, *Interstate Rendition: Executive Practices and the Effects of Discretion*, 66 Yale L.J. 97, 112 (1956).

[2] *Hamlet*, Act V, Scene 1, line 186.

[3] The Commonwealth cites a number of cases in a variety of civil cases for the proposition that the universally accepted *Dennison* rule is a "lone historical relic." If *Dennison* were a case in which an individual plaintiff with requisite standing sought to obtain a benefit by forcing a low-level state official to comply with federal law, the Commonwealth might have had a point. Of course, what the Commonwealth overlooks is the constitutionally unique criminal justice context of this case. None of the commerce and due process cases cited by the Commonwealth involve judicial orders to governors of sovereign states that in effect direct them to dispatch police officers to arrest citizens for involuntary transport to a sister state to face criminal charges.

[4] Some of the unqualified statements in Dennison to the effect that federal courts cannot issue writs of mandamus to state officials may have lost their general applicability. The essential holding of the *Dennison* decision, however, is that the

(Continued on following page)

tive branch decisions that an individual should not be subject to criminal sanctions, regardless of whether relief from criminal liability is based on a decision not to prosecute, a grant of prosecutorial immunity, a grant of executive clemency, or a refusal to extradite. Second, principles of federalism demand great restraint before federal courts attack extradition decisions of state governors. Third, if self-enforcement by the states of the Extradition Clause proves inadequate, the Congress is the proper forum for the development of federal enforcement machinery.

A. Nonintervention By Federal Courts In Extradition Matters Is Supported By Judicial Respect For The Political Branches Of Government In Questions Of Whether To Subject Individual Citizens To Criminal Proceedings.

Under our Constitution, the federal judiciary form an important bulwark for the protection of the individual against the popular will of the majority as expressed by actions of the political branches of government. The Bill of Rights outlines a specific set of rights vested in the individual which the judiciary faithfully applies in cases or controversies notwithstanding the shouts of the Jacobinic crowd.

As Dean Choper has noted, the historic role of this Court in protecting the rights of individuals is not based

---

(Continued from previous page)

federal judiciary should not invoke its powers of judicial review over the decisions of state governors under the Extradition Clause. This irreducible principle is as valid today as it was in 1861.

on the view that the members of this Court are wiser than officials in other branches of government. The rationale for this Court's role as the guardian of individual liberties is institutional in nature. Because individual liberties are frequently endangered by popular majorities, there is a distinct institutional advantage in placing the guardianship of individual liberties in the hands of life appointed justices who are relatively aloof from the political process and insulated from emotive bursts of popular opinion. J. Choper, *Judicial Review and the National Political Process,* 68 (1980) [hereinafter *Judicial Review*].

When it comes to a decision by politically responsive executive branch officials to relieve an individual from the possibility of criminal sanctions, however, the federal judiciary should defer and has deferred to the political branches of government. While our constitutional scheme presents the federal judiciary with a specific constitutional portfolio to protect the individual from unconstitutional exercise of state power, the nonmajoritarian courts have no role in second-guessing an executive branch decision that one of its citizens should not be forced to undergo criminal prosecution. The rule of judicial non-interference applies to executive branch decisions whether to prosecute an individual, *cf. Imbler v. Pachtman,* 424 U.S. 409, 424 (1976), whether to grant a person immunity or executive clemency, *Ullman v. United States,* 350 U.S. 422, 432-33 (1956) (immunity); *Solesbee v. Balkcom,* 339 U.S. 9, 12 (1950) (executive clemency), and whether an individual should be extradited to another jurisdiction to face criminal charges, *Kentucky v. Dennison,* 66 U.S. (24 How.) 110 (1861).

The decision to subject an individual to criminal prosecution reflects a considered political judgment that the

requirements of public policy demand the sacrifice of the individual for the general good.[5] The reluctance of the federal judiciary to coerce the politically responsive state executive branch to subject one of its citizens to the criminal justice gauntlet of another state is premised on the view that this kind of decision is best left to the majoritarian branches of government.

Puerto Rico's brief ignores this important distinction between protection of individual rights and coercion of other branches of government who decline to act against a citizen. Citing a host of cases where federal courts have used the due process clause and federal substantive law as a shield *to protect* the individual accused of crime, Puerto Rico asks this Court to take the unprecedented step of employing the Extradition Clause as a sword to force a politically responsive branch of government *to act against* an individual.[6]

---

[5] *Cf.* O. Holmes, *The Common Law* 41 (1963).

[6] Puerto Rico thus seeks to turn the extradition process away from its historic role as a guardian of individual rights. For years, the extradition process protected persons from discriminatory application of the trial process, threatened civil rights violations—including the ultimate violation of lynching—and poor prison conditions. For instance, in 1937, Governor Harley refused to extradite a black man who escaped from the chain gang in Georgia where newspaper accounts emphasized the poor prison conditions and possibility of lynching. And, in *Commonwealth v. Superintendent of County Prison,* 152 Pa. Super. 167, 31 A.2d 576 (1943), a court refused to allow extradition of a black fugitive where evidence showed that the defendant could not receive a fair trial and was in danger of being lynched. *See* Murphy, *Revising Domestic Extradition Law,* 131 U. Pa. L.Rev. 1063, 1074-75 (1983).

The failure of Puerto Rico to recognize the critical distinction between protecting and impaling an individual is reflected in the Commonwealth's superficial linguistic analysis of Article IV. The Commonwealth appears to believe that the mere presence of the term "shall" in the Extradition Clause is the end of this case, but in fact it is not even the beginning. The fundamental question before this Court is not what the term "shall" means or does not mean, though even this question is not free from doubt.[7]. The linguistic formulation of the issue

---

[7] The federal criminal code, for instance, is pockmarked with statutes which declare that "whosoever" engages in various acts "shall" be fined or imprisoned or both. *See, e.g.*, 18 U.S.C. § 111 (maritime assaults); 18 U.S.C. § 152 (false oaths in bankruptcy); 18 U.S.C. § 201 (bribery of federal officials). Certainly the Commonwealth would not contend that a federal court would issue a writ of mandamus to compel federal executive authorities to institute criminal proceedings because of the appearance of the term "shall" in the criminal statutes. If this rule were embraced by the judiciary, every dead-letter criminal statute would be kept alive through extraordinary life-sustaining judicial measures.

Criminal statutes thus do not proscribe prosecutors from declining to proceed against an individual who has in fact committed a crime. This tradition has been applied by state governors, who on occasion have declined to extradite in order to protect individuals from slavery-related prosecutions or to inject "human compassion in extraordinary circumstances." *South Dakota v. Brown*, 144 Cal. Rptr. 758, 576 P.2d 473, 486 (1978) (Mosk, J., dissenting); Murphy, *Revising Domestic Extradition Law*, 131 U. Pa. L. Rev. 1064, 1074-75 (1983). Similar purposes may be served today in disputes involving child custody where there are conflicting state court decrees, efforts to extradite based primarily on debt collection or noncriminal purpose, or extradition of a long time law abiding citizen for a crime occurring years before.

As an alternative method of disposition of this case, this Court could hold that, as a matter of law, the "shall" language in the Extradition Clause operates in a fashion similar to that superficially mandatory language in federal criminal statutes. Under the principles of judicial restraint discussed in Part I of this Brief, however, the respondent believes that the linguistic issue need not be addressed.

begs a more fundamental question, which is whether federal judicial review is an appropriate way to enforce the Extradition Clause under our constitutional scheme. Because the nonmajoritarian courts have no institutionally justifiable role in reviewing extradition actions of state governors that do not impinge on individual liberties, the answer to this question is clearly no.[8]

B. Notions Of Federalism Reinforce Federal Judicial Reluctance To Interfere In Criminal Justice Disputes Between Sovereign States.

Ironically, Puerto Rico cites a number of cases upholding principles of federalism in support of its effort to provoke a federal judicial attack on Governor Branstad. *See* Petitioner's Brief at 18, 31. Federalism concerns, however, strongly suggest that this Court should proceed with caution before it embarks upon a constitutionally unnecessary confrontation with the chief executive of a sovereign state.

In *Younger v. Harris*, 401 U.S. 37 (1971), this Court emphasized the deference that should be afforded to state processes in criminal matters. The Court stressed the notion of:

> . . . 'comity,' that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate State governments, and a continuance in the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.

---

[8] The refusal of this Court to intervene in extradition matters could be characterized either as a result of lack of jurisdiction or as a voluntary exercise of judicial restraint, or abstention.

401 U.S. at 44. Federal judicial intervention in state criminal processes is appropriate only where the threat to the "individual of irreparable loss" is "immediate and great." *Fenner v. Boykin,* 271 U.S. 240, 243-44 (1926), cited with aproval in *Younger v. Harris,* 401 U.S. at 45-46. This Court has also applied the *Younger* principle in a variety of other contexts. *See Ohio Civil Rights Commission v. Dayton Schools,* 477 U.S. —, 106 S. Ct. 2718 (1985); *Rizzo v. Goode,* 423 U.S. 362 (1976); *Huffman v. Pursue, Ltd.,* 420 U.S. 592 (1975).

The principles of *Younger v. Harris* apply with full force to extradition proceedings which implicate the same kinds of sovereign interests present in *Younger.* In the context of this case, there is absolutely no showing of "immediate and great" threat of irreparable harm to any individual. As a result, federal judicial review of the decision of the State of Iowa not to expose an individual to criminal sanctions, a decision which reflects "an important aspect of state sovereignty," *cf. Kelly v. Robinson,* 55 U.S.L.W. 4011, 4014 (U.S. Nov. 12, 1976), should not be available. Puerto Rico, if it is unsatisfied with its ability as a territory to obtain fugitives from the sovereign states, should turn to the legislative and executive branches of the federal government for additional enforcement tools.

C. Congress Is The Appropriate Forum To Develop Remedies To Enforce The Extradition Clause Should Self-enforcement Prove Inadequate.

Puerto Rico has attempted to confront this court with a Hobson's choice: either the federal judiciary enforces the "shall" in Article IV, or the provision is meaningless. This assertion, however, is simply not correct. In the first

place, Puerto Rico overlooks the fact that since the founding of the Republic, the extradition process has worked well without intrusive federal court supervision. In addition, Puerto Rico ignores the role of the political branches of the federal government in enforcing extradition.

1. The practical realities of the extradition process provide a check on executive refusal to extradite fugitives.

Puerto Rico claims that interstate discord over extradition occurs "all too often," but cites no empirical support for its vague assertion. Petitioner's Brief at 22-23. Contrary to Puerto Rico's position, the little empirical data that is available indicates that denials of extradition for whatever reason, are uncommon.[9] History thus suggests that the Extradition Clause has successfully prevented the "Balkanization of the Nation," *New York v. O'Neil*, 359 U.S. 1, 8 (1958), as was its design, without federal judicial intervention.

As with most political matters, interstate politics provide an effective check on extradition disputes. A state may be an asylum state on one occasion, but a demanding state on another. Persistent recalcitrance may result in retaliation and can ultimately damage a state's ability to

---

[9] *See South Dakota v. Brown*, 144 Cal. Rptr. 758, 576 P.2d 473, 481-82 (1978); Comment, *Interstate Rendition: Executive Practices and the Effects of Discretion*, 66 Yale L. J. 97, 100 n.17 (1956).

prosecute its own fugitives. The paucity of extradition conflicts demonstrates that the wheels of the interstate political process in extradition matters are greased by a pattern of cooperation. *See Kentucky v. Dennison*, 65 U.S. (24 How.) at 109.

2. Effective federal enforcement of the Extradition Clause may be obtained through action of the legislative and executive branches of the federal government without requiring a confrontation between the federal judiciary and a state governor.

In addition to the discipline imposed by political reality, the Extradition Clause may be enforced by the Congress and the federal executive branch wholly without thrusting the federal courts into the difficult position of issuing writs of mandamus to the chief executives of sovereign states.

The notion that the political branches of the federal government should be the ultimate arbiters of questions involving the distribution of power in the federal system is hardly novel. As Dean Choper has observed, constitutional questions of federalism differ from those of individual liberty both in terms of their distinctive pragmatic quality and in the likelihood of their fair resolution within the national political chambers. J. Choper, *Judicial Review*, at 203. If the states feel that they are not getting the benefit of the bargain reflected in the Extradition

Clause, they may seek effective and potentially very intrusive relief from Congress.

The potential for effective congressional enforcement of the Extradition Clause is illustrated by the Fugitive Felon Act, 18 U.S.C. § 1073. Through the Fugitive Felon Act, Congress has declared that it is a federal crime to move or travel in interstate commerce to avoid prosecution for a felony. Thus, a fugitive who flees from a jurisdiction to avoid prosecution for a felony, as is alleged in this case, is subject to federal arrest and removal to the jurisdiction where the underlying crime was committed without involving the governor of the asylum state. Once the fleeing felon is removed to the jurisdiction where the crime has been committed in order to face federal charges under the Fugitive Felon Act, the state may regain custody of the felon for local prosecution. The primary purpose of the Fugitive Felon Act was apparently to allow federal law enforcement agents to assist in the search for persons charged with felonies believed to have crossed interstate lines to avoid prosecution. *See e.g. United States v. Thurman*, 687 F.2d 11, 13 (3rd Cir. 1982); *Hemons v. United States*, 163 F.2d 228, 239 (6th Cir. 1947); *United States v. Brandenburg*, 144 F.2d 656, 659 (3rd Cir. 1944).

The Fugitive Felon Act demonstrates that Congress has the power to enforce effectively the Extradition Clause through the federal criminal process. Through the Act, Congress apparently wished to provide states with a measure of federal assistance in securing the return of fugitives. Congress was not willing, however, to authorize federal criminal prosecution for interstate flight in all instances though it plainly had the power to do so as the

ultimate supervisor of the federal system. Instead, the Congress imposed a political check on the initiation of federal criminal proceedings under the Fugitive Felon Act. It required that before a prosecution under the Act could be initiated the action must be formally approved in writing either by the Attorney General or an Assistant Attorney General of the United States. The Congress further provided that the approval function may not be delegated to other subordinates within the Justice Department. *See* 18 U.S.C. § 1073.

The Fugitive Felon Act thus establishes the Attorney General as an important political decisionmaker in determining whether the federal criminal justice apparatus is applied against a fleeing felon. The Attorney General's discretion in determining whether to initiate the federal criminal process is not controlled or limited in any way by the Act.[10]

The Fugitive Felon Act, on the books at all times relevant to this controversy, authorizes the Attorney General or an Assistant Attorney General, in his or her discretion, to charge Ronald Calder with a federal crime, secure his arrest on the federal warrant and return him

---

[10] Apparently, the Department of Justice has taken the position that the Fugitive Felon Act is not intended to provide an alternative to state extradition proceedings. *See United States Attorneys' Manual,* Section 9-69.410 (August 1, 1985). This administrative interpretation, not compelled by the language of the Act, reflects a policy of deference to state governors in the extradition process.

Even if the interpretation of the Fugitive Felon Act by the Department of Justice is correct, the general point remains valid, for Congress has the power, even if it is unexercised, to enforce the Extradition Clause through the federal criminal justice process. In light of the availability of this mechanism for providing federal enforcement of extradition, the federal judiciary need not fashion new judicially created remedies.

to Puerto Rico. Puerto Rico may claim that the Fugitive Felon Act, for political or other reasons, has proven inadequate for its needs. The point, however, is not whether the Fugitive Felon Act is adequate to provide Puerto Rico with the relief it seeks in this case, but whether in our federal constitutional scheme Puerto Rico has an nonjudicial avenue to obtain federal assistance in vindicating its claim under the Extradition Clause. Through the Fugitive Felon Act Congress has provided a mechanism to vindicate the criminal justice interests of Puerto Rico in a fashion that does not require the federal courts to engage in unnecessary conflicts with the chief executives of the sovereign states.

The argument of Puerto Rico that this Court is a needed referee in extradition disputes between states is thus not supportable. Congress has appointed a referee, namely, the Attorney General or an Assistant Attorney General, through the Fugitive Felon Act. Given the federalism dimension of the controversy and the strong representation of the states in Congress, particularly in the Senate, the politically responsive branches of government institutionally are better suited to determine the degree of federal involvement required in extradition disputes between states than is the judiciary.[11] *See Garcia v. San Antonio Metropolitan Transit Authority*, — U.S. —, 105 S.Ct. 1005 (1985).

---

[11] Puerto Rico, of course, may complain that reliance on Congress to provide remedies for extradition problems is unsatisfactory because Puerto Rico lacks representation in the Congress. Puerto Rico's lack of Congressional representation, of course, is a result of its not being a "state." Because Puerto Rico is not a "state," it is not entitled to invoke the Extradition Clause of Article IV, section 2. See discussion under Part II, *infra*.

The Fugitive Felon Act demonstrates that federal judicial review of the extradition decisions of state governors is unnecessary for the effective preservation of our constitutional scheme. In such circumstances, as Dean Choper has noted, this Court should decline to exercise its authority. J. Choper, *Judicial Review* at 2. Through such abstention, the Court will reduce the friction between the federal judiciary and the majoritarian branches of government and will enhance its ability to render enforceable constitutional decisions when judicial intervention is critically needed, namely, when individual liberties are threatened by majoritarian action. *Id.*

II. BECAUSE PUERTO RICO IS NOT A SOVEREIGN STATE, IT MAY NOT SEEK TO USE THE EXTRADITION CLAUSE AS A SWORD TO ENLIST THE AID OF THE FEDERAL JUDICIARY IN AN UNPRECEDENTED FEDERAL JUDICIAL EFFORT TO COERCE THE POLITICALLY RESPONSIVE BRANCHES OF STATE GOVERNMENT TO EXTRADITE A FUGITIVE.

In a footnote in its brief, the Commonwealth concedes, as it must, that the Extradition Clause applies only to a "State." *See* Petitioner's Brief, pp. 12-13, n.6 The Commonwealth suggests, however, that the framers' choice of words should not be taken literally, but may be expanded to include entities other than states. Puerto Rico in essence urges that Congress, through legislation, has effectively expanded the scope of the constitutional

language by statutorily providing Puerto Rico with a substantial degree of autonomy and independence. *Id.*[12]

The petitioner's argument is unpersuasive. Article IV demonstrates that the framers knew the difference between states of the union and other entities under the direct control of the federal government. Article IV, section 2, cl. 2, which contains the Extradition Clause, uses the term "state." The very next section of Article IV, which vests power in the Congress to regulate land under federal control that is not within the boundaries of a state, employs the term "territory." Art. IV, sec. 3, cl. 2.

The terms "state" and "territory," as used in Article IV, are not synonymous. Congress does not have the power to regulate the states, but only the territory of the United States. Similarly, the Extradition Clause applies only to demands by executive authority of a state. As a result, Puerto Rico cannot invoke the Extradition Clause

---

[12] It is true, as Puerto Rico suggests, that the parties did not expressly raise the issue of whether Puerto Rico as a non-state may invoke the Extradition Clause of Article IV. This is not surprising in light of the breadth of *Kentucky v. Dennison*, which was clearly dispositive of all issues presented in Puerto Rico's petition. As a result, it was not necessary to raise any lesser included arguments below. Unlike the lower federal courts, however, this Court has the authority to revise or even overrule *Kentucky v. Dennison*. As a result, alternative arguments are now appropriate.

Puerto Rico does not suggest, nor could it successfully urge, that the issue is not properly before the Court. The question of whether Puerto Rico may avail itself of the Extradition Clause is entirely legal in character, and no concept of deference to state courts would operate to restrain this Court from considering the issue on appeal from the federal Court of Appeals. As a result, the rule in *Illinois v. Gates*, 462 U.S. 213 (1983) has no application.

to require the Governor of Iowa to extradite Calder. *Cf. Fornaris v. Ridge Tool Co.*, 400 U.S. 41, 42 n.1 (1970) (Puerto Rican statute not "state" statute within 28 U.S.C. § 1254(2)).[13]

Puerto Rico asserts that *Kopel v. Bingham*, 211 U.S. 468 (1909), stands for the proposition that Puerto Rico should be treated as a state for purposes of the Extradition Clause. In *Kopel*, this Court denied a writ of habeas corpus on behalf of a fugitive who was arrested pursuant to a rendition warrant issued by the governor of New York.

The issue in *Kopel*, however, was fundamentally different from the question which the Court confronts today. In *Kopel*, the Court properly held that the executive authorities in Puerto Rico were authorized by a federal statute to make an extradition request to the Governor of a State of the Union. The Court rejected the claim that Puerto Rican officials, in making the request were acting *ultra vires*, because the Congress, through its power to regulate the territories, Article IV, sec. 3, cl. 2, had authorized the Puerto Rican officials to make extradition requests.

In this case, the respondents do not question that Puerto Rican officials are acting within the scope of their

---

[13] In *Examining Board of Engineers v. Flores de Otero*, 426 U.S. 572 (1976), this Court dissected a complicated statutory history to determine if Congress intended to include Puerto Rico in the statutory term "state" as it appeared in 28 U.S.C. § 1343(3). After a lengthy survey of the legislative history, the Court, noting that previous statutory provisions had expressly included territories, came to the conclusion that the use of the term "state" in later legislation was not designed to exclude Puerto Rico. *See* 426 U.S. 581-597. The *Flores de Otero* case offers no guidance on the broad constitutional questions presented here.

authority, ultimately derived from the Congress, when they made the extradition requests in this case. If a Governor of Iowa had granted extradition, Ronald Calder would not be able to block extradition in a habeas corpus proceeding on the ground that Puerto Rican officials lacked authority to make the request. *Kopel v. Bingham*, 211 U.S. 468 (1909). The issue presented here, however, is not a statutory question of the scope of power Congress has delegated to officials in Puerto Rico, but rather the entirely different constitutional question of whether Puerto Rico, as a territory, may avail itself of whatever enforcement machinery is available to states under the Extradition Clause. The better view is that the plain meaning of the Constitution as reflected in the deliberate verbal choices of the framers should not be overridden by any apparent exigencies in this or any other case.

Puerto Rico seeks to avoid the plain meaning of the Extradition Clause by presenting itself to this Court as the functional equivalent of a "state." At present, Puerto Rico has a considerable degree of autonomy as a result of Congressional legislation enacted pursuant to its legislative power to regulate territory of the United States. *See Examining Board v. Flores de Otero*, 426 U.S. 572, 594 [illegible]76).

There are a number of important differences, however, between a state of the union and a territory upon which Congress has conferred substantial local authority. The autonomy of Puerto Rico is not guaranteed by the Tenth Amendment or any other constitutional provision from Congressional encroachment, nor is Puerto Rico

locked into the indivisible union through admission to statehood. Puerto Rico thus seeks to extend application of the Extradition Clause to an entity whose political characteristics, unlike that of the states, are not constitutionally established. This proposition would have startled the framers.

In addition, Puerto Rico seeks to force the states to honor its rendition requests even though Congressional representatives of the states have not had an opportunity to consider the admission of Puerto Rico as a state into the Union pursuant to Article IV, section 3, clause 1. Puerto Rico's argument thus not only offends the plain meaning of the Extradition Clause, but serves to eviscerate the significance of the statehood admissions process.

Puerto Rico also observes that the criminal due process rights of all persons in Puerto Rico are protected by the Federal Constitution to the same extent as in any state of the Union. Petitioner's Brief at 13, n. 24. The degree to which constitutional provisions apply to Puerto Rico has been a difficult and controversial question for this Court. *See generally Examining Board v. Flores de Otero*, 426 U.S. at 599 n.30. In *Balzac v. Porto Rico*, 258 U.S. 298 (1922), this Court held that the right to jury trial did not apply in Puerto Rico. While this case has been criticized, *Harris v. Rosario*, 446 U.S. 643, 653 (1980) (Marshall, J., dissenting), it has not been expressly overruled. Indeed, when this Court recently held that the search-and-seizure provisions of the Fourth Amendment applied to criminal proceedings in Puerto Rico, the majority found it necessary to consider the legislative history of Congressional action with respect to Puerto Rico.

See Torres v. Comm. of Puerto Rico, 442 U.S. 656, 470 (1979). This recent decision, supported by prior precedent, *Mullaney v. Anderson*, 342 U.S. 415, 419-420 (1952), stands for the proposition that the applicability of constitutional provisions in Puerto Rico may depend upon Congressional approval or acquiescence. Thus, the states have no direct constitutional guarantee that citizens who are extradited to territories will enjoy the full range of protections that would be available in the courts of a sister state. As a result, the Extradition Clause should not apply to rendition demands by Puerto Rico.

CONCLUSION

This Court should decline Puerto Rico's invitation to thrust the federal judiciary into extradition disputes. Federal judicial review of a decision by a state governor not to force a citizen to face criminal proceedings in a sister state would be an unwarranted intrusion into the political process by the most nonpolitical branch of government. Federal judicial review of extradition decisions by state governors would offend notions of federalism and comity. Furthermore, federal court intervention is not required given the ability of Congress to develop appropriate remedies should the extradition process break down.

In the alternative, this Court may decline to address the main extradition issue and affirm the Court of Appeals on the ground that because Puerto Rico is not a "state," it may not seek the benefits of the Extradition Clause.

For the above reasons, the respondents respectfully pray that the decision of the Court of Appeals in the above-captioned matter be affirmed.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

*BRENT R. APPEL
DICKINSON, THROCKMORTON,
PARKER, MANNHEIMER & RAIFE
1600 Hub Tower
Des Moines, Iowa 50309
(515) 244-2600

ROXANN RYAN
PAMELA GREENMAN DAHL
Assistant Attorneys General
Hoover Building
State Capitol
Des Moines, Iowa 50309

Attorneys for the Honorable Terry E. Branstad and the State of Iowa, Respondents

WILLIAM L. KUTMUS
620 Fleming Building
Des Moines, Iowa 50309
(515) 288-3339

Attorney for Intervenor Ronald Calder, Respondent

*Counsel of Record